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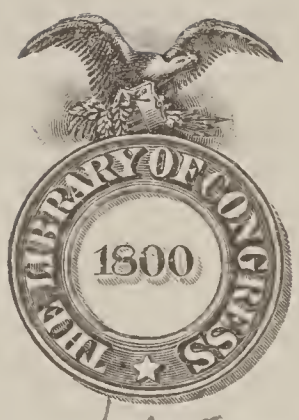

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62D CONGRESS
1st Session

SENATE

DOCUMENT
No. 104

PRESIDENT OF THE SENATE PRO TEMPORE

PROCEEDINGS IN THE UNITED STATES SENATE FROM APRIL 6, 1789, TO DECEMBER 5, 1911

RELATING TO

THE ELECTION, POWERS, DUTIES, AND TENURE IN OFFICE OF THE PRESIDENT OF THE SENATE PRO TEMPORE; INCLUDING THE REPORT OF THE COMMITTEE ON PRIVILEGES AND ELECTIONS, JANUARY 6, 1876

COMPILED BY

HENRY H. GILFRY
Chief Clerk of the United States Senate

U. S. Congress, Senate.

PRESENTED BY MR. LODGE

AUGUST 21, 1911.—Ordered to be printed

WASHINGTON
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PROCEEDINGS IN THE UNITED STATES SENATE

RELATIVE TO THE

ELECTION OF THE PRESIDENT OF THE SENATE PRO TEMPORE,

FROM APRIL 6, 1789, WHEN A QUORUM APPEARED FOR THE FIRST TIME, AND THE SENATE WAS ORGANIZED, TO DECEMBER 5, 1911;

INCLUDING

DESIGNATIONS BY THE VICE PRESIDENT AND PRESIDENT PRO TEMPORE OF SENATORS TO OCCUPY THE CHAIR TEMPORARILY DURING THEIR ABSENCE, AND RELATING TO THE POWERS, DUTIES, AND TENURE IN OFFICE OF THE PRESIDENT OF THE SENATE PRO TEMPORE.

COMPILED BY

HENRY H. GILFRY,

Chief Clerk, United States Senate.

ELECTIONS OF PRESIDENTS OF THE SENATE PRO TEMPORE.

FIRST CONGRESS, FIRST SESSION.

Monday, April 6, 1789 (Journal, p. 7).

The Senate proceeded by ballot to the choice of a President, for the sole purpose of opening and counting the votes for President of the United States.

John Langdon, Esq., was elected.

* * * * * * *

The House then met the Senate in the Senate Chamber and the President elected for the purpose opened and counted the votes of the electors for President and Vice President of the United States, and the House after some time withdrew. (Journal, p. 8.)

The Senate then proceeded, by ballot, to the choice of a President of their body, pro tempore.

John Langdon, Esq., was duly elected.

The President elected for the purpose of counting the votes, declared to the Senate that the Senate and House of Representatives had met, and that he, in their presence, had opened and counted the votes of the electors for President and Vice President of the United States, which were as follows:

States.	George Washington, Esq.	John Adams, Esq.	Samuel Huntingdon, Esq.	John Jay, Esq.	John Hancock, Esq.	Robert H. Harrison, Esq.	George Clinton, Esq.	John Rutledge, Esq.	John Milton, Esq.	James Armstrong, Esq.	Edward Telfair, Esq.	Benjamin Lincoln, Esq.
New Hampshire	5	5	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Massachusetts	10	10	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Connecticut	7	5	2	.....	.....	.....	.....	.....	.....	.....	.....	.....
New Jersey	6	1	.....	5	.....	.....	.....	.....	.....	.....	.....	.....
Pennsylvania	10	8	.....	.....	2	.....	.....	.....	.....	.....	.....	.....
Delaware	3	.....	.....	3	.....	.....	.....	.....	.....	.....	.....	.....
Maryland	6	.....	.....	.....	.....	6	.....	.....	.....	.....	.....	.....
Virginia	10	5	.....	1	1	.....	3	.....	.....	.....	.....	.....
South Carolina	7	.....	.....	.....	1	.....	.....	6	.....	.....	.....	.....
Georgia	5	.....	.....	.....	.....	.....	.....	.....	2	1	1	1
Total	69	34	2	9	4	6	3	6	2	1	1	1

Tuesday, April 21, 1789 (Journal, p. 14).

* * * * * * *

Mr. Langdon, the president pro tempore, conducted the Vice President, John Adams, to the chair, who then addressed the Senate and took his seat as the presiding officer.

Friday, August 7, 1789 (Journal, p. 55).

The Senate assembled; * * *

* * * * * * *

In the absence of the Vice President, proceeded to elect a President pro tempore; and the votes being collected and counted, the Hon. John Langdon was unanimously appointed.

SECOND CONGRESS, FIRST SESSION.

Wednesday, April 18, 1792 (Journal, p. 428).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides, and the Hon. Richard Henry Lee was duly elected.

SECOND CONGRESS, SECOND SESSION.

Monday, November 5, 1792 (Journal, p. 451).

In the absence of the Vice President and also of the Hon. Richard Henry Lee, elected President pro tempore at a former session, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon. John Langdon was duly elected.

Friday, March 1, 1793 (Journal, p. 499).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides, and the Hon. John Langdon was duly elected.

THIRD CONGRESS, FIRST SESSION.

Monday, December 2, 1793 (Journal, p. 3).

Mr. Langdon, the President pro tempore, was present, administered the oath required by law to the Vice President of the United States (John Adams).

Saturday, May 31, 1794 (Journal, p. 96).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides, and the Hon. Ralph Izard was duly elected.

Mr. Izard, President pro tempore of Senate, attended November 3.

Vice President attended November 10.

THIRD CONGRESS, SECOND SESSION.

Friday, February 20, 1795 (Journal, p. 162).

The Vice President being absent (having been excused), the Senate proceeded to the election of a President pro tempore, as the Constitution provides, and the Hon. Samuel Livermore was duly elected; who, declining the appointment,

The Senate proceeded to the election of the Hon. Henry Tazewell to that office.

[While the Journal above does not say he was elected, the orders sent to the President of the United States and the House of Representatives notifying them of his election indicate he was duly elected.]

FOURTH CONGRESS, FIRST SESSION.

Monday, December 7, 1795 (Journal, p. 193).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides, and the Hon. Henry Tazewell was duly elected.

Friday, May 6, 1796 (Journal, p. 250).

The Vice President being absent (having been excused, Journal, p. 245), the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon. Samuel Livermore was duly elected.

FOURTH CONGRESS, SECOND SESSION.

Thursday, February 16, 1797 (Journal, p. 326).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon. William Bingham was duly elected.

FIFTH CONGRESS, FIRST SESSION.

Thursday, July 6, 1797 (Journal, p. 386).

The Vice President being absent (having been excused for remainder of the session, Journal, p. 386), the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon William Bradford was duly elected.

FIFTH CONGRESS, SECOND SESSION.

Wednesday, November 22, 1797 (Journal, p. 406).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. Jacob Read was duly elected.

Wednesday, June 27, 1798 (Journal, p. 519).

The Vice President being absent (having been excused from further attendance during the session, Journal, p. 519), the Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. Theodore Sedgwick was duly elected.

FIFTH CONGRESS, THIRD SESSION.

Thursday, December 6, 1798 (Journal, p. 557).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. John Laurance was chosen.

Friday, March 1, 1799 (Journal, p. 599).

The Vice President being absent (having notified the Senate he desired to be excused from attendance for the remainder of the session, Journal, p. 588), the Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. James Ross was duly elected.

SIXTH CONGRESS, FIRST SESSION.

Monday, December 2, 1799 (Journal, p. 3).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. Samuel Livermore was chosen.

On motion,

Ordered, That Mr. Read administer the oath required by law to the President of the Senate pro tempore.

Wednesday, May 14, 1800 (Journal, p. 96).

The Vice President having, by letter, intimated his desire to be excused from further attendance, as it would probably be the last day of the session, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. Uriah Tracy was duly elected.

SIXTH CONGRESS, SECOND SESSION.

Friday, November 21, 1800 (Journal, p. 106).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. John E. Howard was chosen.

Saturday, February 28, 1801 (Journal, p. 134).

The Vice President (Thomas Jefferson) addressed the Senate as follows:

Gentlemen of the Senate:

To give the usual opportunity of appointing a President pro tempore, I now propose to retire from the chair of the Senate * * *

After which the Vice President retired.

Whereupon (Journal, p. 135),

The Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. James Hillhouse was duly elected.

SEVENTH CONGRESS, FIRST SESSION.

Monday, December 7, 1801 (Journal, p. 155).

The Vice President being absent, the Senate proceeded to the election of the President pro tempore, as the Constitution provides; and the Hon. Abraham Baldwin was chosen.

Saturday, April 17, 1802 (Journal, p. 214).

The Vice President being absent (he having notified the Senate the day before that he would withdraw himself from further attendance during the session, Journal, p. 214), the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. Abraham Baldwin was chosen.

SEVENTH CONGRESS, SECOND SESSION.

Monday, December 13, 1802 (Journal, p. 242).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the ballots being collected and counted, the whole number was found to be 17, of which 9 make a majority.

Mr. Bradley had 7, Mr. Tracy 7, Mr. Baldwin 1, Mr. Dayton 1, and Mr. Logan 1.

There was consequently no choice.

Whereupon,

The Senate proceeded to the election of a President pro tempore, as the Constitution provides, and the ballots being collected and counted, the whole number was found to be 17, of which 9 make a majority.

Mr. Bradley had 8, Mr. Tracy 7, Mr. Dayton 1, and Mr. Logan 1.

There was consequently no choice.

Whereupon,

The Senate proceeded to the election of a President pro tempore, as the Constitution provides, and the ballots being collected and counted, the whole number was found to be 17, of which 9 make a majority.

Mr. Bradley had 8, Mr. Tracy 7, Mr. Dayton 1, and Mr. Logan 1.

There was consequently no choice.

Whereupon,

The Senate proceeded to the election of a President pro tempore, as the Constitution provides, and the ballots being collected and counted, the whole number of votes was 14, of which 8 make a majority.

Mr. Tracy had 7, Mr. Bradley 5, Mr. Dayton 1, and Mr. Logan 1.

There was consequently no choice, and

On motion,

The Senate adjourned to 11 o'clock to-morrow morning.

Tuesday, December 14, 1802 (Journal, pp. 242, 243).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the ballots being collected and counted, the whole number was found to be 17, of which 9 make a majority.

Mr. Bradley had 9, Mr. Tracy 7, and Mr. Dayton 1.

Consequently, the Hon. Stephen R. Bradley was elected President of the Senate, pro tempore.

Friday, February 25, 1803 (Journal, p. 272).

It having been announced that the Vice President was unable to attend on account of the ill state of his health, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the ballots being collected and counted, the whole number was found to be 21, of which 11 make a majority:

Mr. Bradley had 18, Mr. Morris 2, and Mr. Logan 1.

Consequently, the Hon. Stephen R. Bradley was elected President of the Senate pro tempore.

Wednesday, March 2, 1803 (Journal, p. 281).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the ballots being collected and counted, the whole number was found to be 18, of which 10 make a majority:

Mr. Bradley had 13, Mr. Morris 3, Mr. Hillhouse 1, and Mr. Logan 1.

Consequently, the Hon. Stephen R. Bradley was elected President of the Senate pro tempore.

EIGHTH CONGRESS, FIRST SESSION.

Monday, October 17, 1803 (Journal, p. 295).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the ballots being collected and counted, the whole number was found to be 29, of which 15 make a majority:

Mr. Brown had 24, Mr. Baldwin 2, Mr. Dayton 2, and Mr. Pickering 1.

Consequently, the Hon. John Brown was elected President of the Senate pro tempore.

Monday, January 23, 1804 (Journal, p. 343).

The Vice President being absent on account of the ill state of his health, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the ballots having been collected and counted, a majority thereof was for the Hon. John Brown, who was accordingly elected President of the Senate pro tempore.

Saturday, March 10, 1804 (Journal, p. 372).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution prescribes; and the ballots having been collected and counted, a majority thereof was for the Hon. Jesse Franklin, who was accordingly elected President of the Senate pro tempore.

EIGHTH CONGRESS, SECOND SESSION.

Tuesday, January 15, 1805 (Journal, p. 434).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. Joseph Anderson was elected.

Thursday, February 28, 1805 (Journal, p. 462).

The Vice President being indisposed, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. Joseph Anderson was elected.

Saturday, March 2, 1805 (Journal, p. 467).

The Vice President took an affectionate leave of the Senate and retired.

Whereupon,

The Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. Joseph Anderson was elected.

NINTH CONGRESS, FIRST SESSION.

Monday, December 2, 1805 (Journal, p. 3).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. Samuel Smith was appointed.

Tuesday, March 18, 1806 (Journal, p. 59).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. Samuel Smith was appointed.

NINTH CONGRESS, SECOND SESSION.

Monday, March 2, 1807, 7 o'clock in the evening (Journal, p. 168).

The Vice President being absent (having given notice during the day that he should absent himself from the Senate for the remainder of the session, Journal, p. 168), the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. Samuel Smith was elected.

TENTH CONGRESS, FIRST SESSION.

Saturday, April 16, 1808 (Journal, p. 269).

On motion,

The Senate adjourned to 12 o'clock and attended the funeral of the Hon. Jacob Crowninshield. After which they returned to their Chamber, and the Vice President having retired for the remainder of the session, the Senate proceeded by ballot to the choice of a President pro tempore, as the Constitution provides; and the Hon. Samuel Smith was elected.

TENTH CONGRESS, SECOND SESSION.

Monday, December 26, and Tuesday, December 27, 1808 (Journal, p. 311).

The Vice President being indisposed, the Senate adjourned.

Wednesday, December 28, 1808 (Journal, p. 311).

The Vice President being absent by reason of the ill state of his health, the Senate proceeded to the election of a President pro tem-

pore, as the Constitution provides; and the Hon. Stephen R. Bradley was appointed.

Monday, January 30, 1809 (Journal, p. 333).

The Vice President having retired, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. John Milledge was appointed.

Mr. Milledge took the chair Saturday, March 4, 1809, at the session specially called that day. (Journal, p. 365.)

ELEVENTH CONGRESS, FIRST SESSION.

Monday, June 26, 1809 (Journal, p. 395).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. Andrew Gregg was elected.

ELEVENTH CONGRESS, SECOND SESSION.

Wednesday, February 28, 1810 (Journal, p. 449).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. John Gaillard was appointed.

Tuesday, April 17, 1810 (Journal, p. 491).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. John Gaillard was elected.

ELEVENTH CONGRESS, THIRD SESSION.

Saturday, February 23, 1811 (Journal, p. 581).

The Vice President being absent (having notified the Senate the day before he should be absent for the remainder of the session, Journal, p. 581), the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. John Pope was elected.

TWELFTH CONGRESS, FIRST SESSION.

Monday, March 23, 1812 (Journal, p. 82).

The Senate assembled, and the Vice President being indisposed,

Adjourned to 11 o'clock to-morrow morning; to which time the several orders of the day were postponed.

Tuesday, March 24, 1812 (Journal, p. 82).

In the absence of the Vice President,

On motion by Mr. Lloyd,

The Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. William H. Crawford was elected.

TWELFTH CONGRESS, SECOND SESSION.

(No necessity for an election of a President pro tempore, Mr. Crawford holding over.)

THIRTEENTH CONGRESS, FIRST SESSION.

(No election during this session, the Vice President being always present.)

THIRTEENTH CONGRESS, SECOND SESSION.

Monday, December 6, 1813 (Journal, p. 387).

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. Joseph B. Varnum was appointed.

Monday, April 18, 1814 (Journal, p. 514).

In the absence of the Vice President,
On motion by Mr. King,
The Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. John Gaillard was elected.

THIRTEENTH CONGRESS, THIRD SESSION.

Friday, November 25, 1814 (Journal, p. 559).

On motion by Mr. Brent, that the Senate now proceed to the election of a President pro tempore, Mr. German submitted the following motion:

Resolved, That the Senate will, on Monday next, at 12 o'clock, proceed to the choice of a President pro tempore,

On the question, Shall this resolution pass?

It was determined in the negative, { Yeas---------- 10 / Nays---------- 20

On motion by Mr. Anderson,
The yeas and nays having been required by a majority of the Senators present,
Those who voted in the affirmative are,
Messrs. Doggett, Dana, German, Goldsborough, Gore, Horsey, Hunter, Lambert, Mason, and Thompson.
Those who voted in the negative are,
Messrs. Anderson, Bibb, Bledsoe, Brent, Brown, Chace, Condit, Fromentin, Gaillard, Lacock, Morrow, Roberts, Robinson, Smith, Tait, Taylor, Turner, Varnum, Walker, and Wharton.
Whereupon,
On motion by Mr. Brent,

Resolved, That the Senate now proceed to the choice of a President pro tempore, as the Constitution provides:

And the Hon. John Gaillard was elected, the election taking place on the second ballot.

(The reelection of Mr. Gaillard was considered necessary on account of the death of the Vice President, Elbridge Gerry, on November 23, 1814.)

FOURTEENTH CONGRESS, FIRST SESSION.

(There being no Vice President there was no election for President pro tempore, Mr. Gaillard holding over.)

FOURTEENTH CONGRESS, SECOND SESSION.

(No election for President pro tempore. On November 25, 1814, Hon. John Gaillard was elected President pro tempore, the Vice President, Elbridge Gerry, having died two days before, on November 23, 1814. Mr. Gaillard served during the remainder of the term of the Vice President, which expired March 3, 1817.)

FIFTEENTH CONGRESS, FIRST SESSION.

Tuesday, March 31, 1818 (Journal, p. 297).

The Vice President having retired from the chair,
On motion by Mr. King,
The Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon. John Gaillard was elected.

FIFTEENTH CONGRESS, SECOND SESSION.

Monday, February 15, 1819 (Journal, p. 261).

The Vice President of the United States having retired from the chair,
On motion by Mr. Daggett,
The Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. James Barbour was elected.

SIXTEENTH CONGRESS, FIRST SESSION.

Tuesday, January 25, 1820 (Journal, p. 117).

The Vice President having retired from the chair,
On motion by Mr. Mellen,
The Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and the Hon. John Gaillard was elected.

SIXTEENTH CONGRESS, SECOND SESSION.

(The Hon. John Gaillard served as President pro tempore through the entire session.)

SEVENTEENTH CONGRESS, FIRST SESSION.

Friday, February 1, 1822 (Journal, pp. 106–107).

Mr. King, of New York, communicated to the Senate the following letter from the Vice President of the United States:

WASHINGTON, CITY, *February 1, 1822.*

DEAR SIR: My health has suffered so much on my journey and since my arrival at the seat of government, that I am desirous, so soon as the weather and the state of the roads will permit, to return to my family.

And I have to request that you will be good enough to communicate this determination to the Senate at their meeting this day.

I have the honor to be, with great respect and consideration, your most obedient servant,

DANIEL D. TOMPKINS.

The Hon. RUFUS KING.

The letter was read;
Whereupon,
On motion by Mr. King,

Resolved, That the Senate will, at 2 o'clock this day, proceed to the choice of a President pro tempore.

Agreeably to order, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon. John Gaillard was elected.

SEVENTEENTH CONGRESS, SECOND SESSION.

Tuesday, February 18, 1823 (Journal, p. 162).

On motion by Mr. Van Buren,

Resolved, That the Senate will to-morrow, at 12 o'clock, proceed to the choice of a President pro tempore.

Wednesday, February 19, 1823 (Journal, p. 164).

Agreeably to order, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon. John Gaillard was elected.

EIGHTEENTH CONGRESS, FIRST SESSION.

Friday, May 21, 1824 (Journal, p. 446).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon. John Gaillard was elected.

SESSION SPECIALLY CALLED ON MARCH 4, 1825.

(Following end of Eighteenth Congress, Second Session.)

Wednesday, March 9, 1825 (Journal, 18th Cong., 2d sess., p. 284, Appendix).

The Vice President having retired from the chair,
On motion,
The Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon. John Gaillard was elected.

NINETEENTH CONGRESS, FIRST SESSION.

Saturday, May 20, 1826 (Journal, pp. 385–386).

On motion by Mr. Woodbury,
It was agreed that, when the Senate adjourns, it be to 6 o'clock this evening.

The Vice President stated to the Senate, that, in conformity to the long-continued practice of his predecessors in leaving the chair a

short time before the final adjournment, he would not again return to the Senate during the present session.

On motion,

The Senate adjourned.

SIX O'CLOCK IN THE EVENING.

In the absence of the Vice President, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. Nathaniel Macon was elected.

(A fuller report of the election of Mr. Macon is found in Gales and Seaton's Register of Debates in Congress, vol. 2, pt. 1, p. 785, as follows:)

The Senate at 6 o'clock assembled, and soon after, on motion of Mr. Noble, proceeded to elect a President pro tempore. The number of ballotings extended to 17, and were as follows:

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Macon	13	13	14	15	17	16	16	16	16	16	19	19	19	19	20	20	21
Smith	12	12	10	11	13	13	15	15	18	19	19	18	19	19	18	18	17
Harrison	5	8	8	7	3	3	3	3	1	1	....	....	....	....	....	....	....

These ballotings occupied about two hours.

At first, and during several ballots, there were 37 Senators present; during the balloting the number increased to 40. The votes not enumerated were scattering for different gentlemen, who received one and two votes each—among these, however, Mr. Van Buren received, at one time, as many as four votes.

At the thirteenth ballot, the numbers were: Smith, 19; Macon, 19; scattering, 2.

On proceeding to count the ballots the fourteenth time Mr. Harrison said he had not voted. The secretary said he had given notice that, if all the gentlemen had voted, the ballots would be counted.

Mr. Harrison walked up to the Secretary's table and deposited his vote with the other ballots.

Mr. Tazewell objected. The rule of the Senate was, that Members should deposit their ballots in the ballot box.

Mr. Berrien moved that the vote of the gentleman from Ohio should be received.

Mr. Tazewell objected, till the proposition should first be put, that the Senate would rescind the aforesaid rule.

The Secretary said the vote of the gentleman from Ohio was now on the table and could not be distinguished from others.

Mr. Branch moved that the ballots be destroyed; which was carried, and the balloting proceeded.

Mr. Macon having, on the seventeenth ballot, a majority of the whole number of votes, was declared duly elected President pro tempore of the Senate, and was conducted to the chair by Mr. Smith, when he delivered a short address, expressive of his thanks for the honor conferred on him, and the assurance that every exertion in his power would be used to dispatch all the business as speedily as possible.

NINTEENTH CONGRESS, SECOND SESSION.

Friday, December 29, 1826 (Journal, p. 70).

The following letter from the Vice President was read:

The SECRETARY OF THE SENATE.

SIR: Having addressed, this morning, to the House of Representatives a communication which may claim an investigation of my official conduct while in

the discharge of the duties of the Department of War, will you please make known to the Senate that a sense of propriety forbids me from resuming my station till the House has disposed of this subject.

Very respectfully, I am, yours, etc., J. C. CALHOUN.

WASHINGTON, *December 29, 1826.*

The Senate then adjourned to Tuesday next.

Tuesday, January 2, 1827 (Journal, p. 70).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon. Nathaniel Macon was elected.

(For a fuller statement of the election of Mr. Macon, see Gales and Seaton's Register of Debates in Congress, vol. 3, pp. 26, 27, as follows:)

Mr. Benton made a motion that in order to give time for the investigation alluded to in the letter, when the Senate do adjourn, it adjourn until Tuesday; which was agreed to.

TUESDAY, JANUARY 2, 1827.

At half past 12 o'clock, the Vice President not appearing to take the chair of the Senate,

Mr. Holmes rose, and addressing the Secretary, moved that the Senate proceed to the election of a President pro tempore.

The question being put to the Senate by the Secretary, the motion was agreed to nem con, and, on counting the ballots, it appeared that the whole number given in was 46; necessary to a choice, 24.

The following was the state of the vote:

For Mr. Macon, 24; for Mr. Smith of Maryland, 13; scattering, 9; total, 46.

Mr. Macon, having received a majority of the whole number of votes given, was declared duly elected President of the Senate pro tempore, and, being conducted to the chair, made his acknowledgments to the Senate for the honor conferred on him and took his seat.

Thursday, March 1, 1827 (Journal, p. 267).

The Vice President announced to the Senate that he should, tomorrow, at 12 o'clock, according to usage, retire from the chair.

Friday, March 2, 1827 (Journal, p. 271).

The Vice President signed the twelve enrolled bills, etc.

The Vice President then left the chair; and,

On motion by Mr. Williams,

The Senate proceeded, by ballot, to the election of a President pro tempore; and, on counting the ballots, it appeared that the Hon. Nathaniel Macon, a Senator from North Carolina, had a majority of the votes, and was therefore declared duly elected.

TWENTIETH CONGRESS, FIRST SESSION.

Wednesday, May 15, 1828 (Journal, pp. 414, 415).

The Vice President being absent, the Senate proceeded by ballot to the election of a President pro tempore; and the Hon. Nathaniel Macon was duly elected.

In an appropriate speech of thanks Mr. Macon prayed to be excused from serving as President pro tempore.

On motion by Mr. Tazewell,

Ordered, That Mr. Macon be excused, and that the Senate proceed to another ballot for the election of a President pro tempore.

The Senate then proceeded to ballot accordingly; and, on counting the ballots, it appeared that the Hon. Samuel Smith was duly elected.

(Gales & Seaton's Register of Debates in Congress, vol. 4, pt. 1, pp. 787–788, says:)

The Secretary having given notice of the absence of the Vice President from the Chair, the Senate proceeded to the election of a President pro tem., and a ballot having been taken, Mr. Macon was declared to have been elected.

Mr. Macon rose, and returned thanks to the Senate for the honor conferred on him, but wished to decline serving.

Mr. Tazewell then moved that Mr. Macon be excused from serving as President pro tempore. This motion having been agreed to nom con, another ballot was taken, and the vote stood as follows:

Mr. Smith of Maryland	26
Mr. Harrison	13
Scattering	3

So Mr. Smith of Maryland was duly elected, and briefly addressed the Senators, thanking them for the confidence reposed in him, etc.

EXECUTIVE PROCEEDINGS AT A SPECIAL SESSION COMMENCING WEDNESDAY, MARCH 4, 1829.

(Following the close of the Twentieth Congress.)

Friday, March 13, 1829 (Journal, 20th Cong., 2d sess., p. 202, Appendix).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore; and, on counting the ballots, it appeared that the Hon. Samuel Smith had a majority, and was elected.

TWENTY-FIRST CONGRESS, FIRST SESSION.

Saturday, May 29, 1830 (Journal, p. 348).

6 O'CLOCK IN THE EVENING.

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore; and, on counting the ballots, it appeared that the Hon. Samuel Smith had a majority, and was elected.

TWENTY-FIRST CONGRESS, SECOND SESSION.

Tuesday, March 1, 1831 (Journal, p. 201).

(The Vice President stated he would be absent the remainder of the session.)

6 O'CLOCK IN THE EVENING.

The Vice President being absent, the Senate proceeded, by ballot, to the election of a President pro tempore; and the Hon. Littleton Waller Tazewell, a Senator from the State of Virginia, was (on the third ballot) duly elected.

Mr. Tazewell thereupon rose and requested that he might be excused from acting as President pro tempore; and,

On motion by Mr. Tyler,

He was excused (the Secretary having put the motion).

The Senate then proceeded again to ballot for a President pro tempore; and, on counting the ballots, it appeared that the Hon. Samuel Smith, a Senator from the State of Maryland, was duly elected.

TWENTY-SECOND CONGRESS, FIRST SESSION.

Monday, July 9, 1832 (Journal, p. 430).

(Called to order by the Secretary.)

The Vice President being absent, the Senate proceeded, by ballot, to the election of a President pro tempore; and the Hon. Littleton W. Tazewell, a Senator from the State of Virginia, was duly elected.

(There were five ballots.)

TWENTY-SECOND CONGRESS, SECOND SESSION.

Monday, December 3, 1832 (Journal, p. 4).

(Called to order by the Secretary.)

The Vice President of the United States being absent (and Mr. Tazewell, elected President pro tempore July 9, 1832, having resigned his seat in the Senate July 16, 1832), the Senate proceeded, by ballot, to the election of a President pro tempore; and the Hon. Hugh Lawson White, a Senator from the State of Tennessee, was duly elected.

(There were five ballots.)

TWENTY-THIRD CONGRESS, FIRST SESSION.

Saturday, June 28, 1834 (Journal, p. 376).

The Vice President being absent, the Senate proceeded, by ballot, to the election of President pro tempore; and the Hon. George Poindexter, a Senator from the State of Mississippi, was duly elected.

TWENTY-THIRD CONGRESS, SECOND SESSION.

Tuesday, March 3, 1835 (Journal, p. 228).

AFTER 5 O'CLOCK IN THE EVENING.

The Vice President being absent, the Senate proceeded, by ballot, to the election of a President pro tempore; and the Hon. John Tyler, a Senator from the State of Virginia, was duly elected.

TWENTY-FOURTH CONGRESS, FIRST SESSION.

Friday, July 1, 1836 (Journal, p. 514).

(The Secretary called the Senate to order.)

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and, on counting the ballots, it appeared that the Hon. William R. King, of Alabama, was elected.

TWENTY-FOURTH CONGRESS, SECOND SESSION.

Saturday, January 28, 1837 (Journal, pp. 170, 171).

The Vice President, upon taking the chair, addressed the Senate, and at the close said: "I respectfully bid you farewell."

After which the Vice President retired.

The Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. William R. King, of the State of Alabama, was duly elected.

SESSION SPECIALLY CALLED FOLLOWING THE CLOSE OF THE TWENTY-FOURTH CONGRESS.

Tuesday, March 7, 1837 (Journal, 24th Cong., 2d sess., p. 366, Appendix).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore; and, on counting the ballots, it appeared that the Hon. William R. King had a majority and was elected.

TWENTY-FIFTH CONGRESS, FIRST SESSION.

Friday, October 13, 1837 (Journal, p. 66).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore; and, on counting the ballots, it appeared that the Hon. William R. King had a majority, and was elected.

TWENTY-FIFTH CONGRESS, SECOND SESSION.

Monday, July 2, 1838 (Journal, p. 514).

(The Secretary called the Senate to order.)

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore; and, on counting the ballots, it appeared that the Hon. William R. King was duly elected.

TWENTY-FIFTH CONGRESS, THIRD SESSION.

Monday, February 25, 1839 (Journal, p. 270).

(The Secretary called the Senate to order.)

The Vice President being absent, the Senate proceeded to the election of a President pro tempore; and, on counting the ballots, it appeared that the Hon. William R. King had a majority, and was elected.

TWENTY-SIXTH CONGRESS, FIRST SESSION.

Friday, July 3, 1840 (Journal, p. 468).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides: and, on counting the ballots, it appeared that the Hon. William R. King had a majority, and was elected.

TWENTY-SIXTH CONGRESS, SECOND SESSION.

Tuesday, March 2, 1841 (Journal, pp. 231, 232).

The Vice President addressed the Senate as follows:

* * * * * * *

I shall always be animated by the sentiment of kindness and friendship with which I take my final leave of the Senate.

(The Vice President having retired, chair was occupied by Mr. Hubbard for remainder of the day, Cong. Globe, p. 224.)

Senate adjourned.

Wednesday, March 3, 1841 (Journal, p. 232).

(The Secretary called the Senate to order.)

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore; and on counting the ballots, it appeared that the Hon. William R. King had a majority, and was elected.

SESSION SPECIALLY CALLED TO FOLLOW THE CLOSE OF THE TWENTY-SIXTH CONGRESS, SECOND SESSION.

Thursday March 4, 1841 (Journal, 26th Cong., 2d sess., p. 250, Appendix).

(The Secretary called the Senate to order.)

In the absence of the Vice President, Mr. Bayard submitted the following motion, which was considered by unanimous consent, and agreed to:

Resolved, That the oath of office be administered to the Hon. William R. King, as Senator-elect from the State of Alabama, by the Hon. Henry Clay, and that he be, and is hereby, chosen President pro tempore of the Senate,

Whereupon,

The oath prescribed by law was administered by the Hon. Henry Clay to the Hon. William R. King; and Mr. King resumed the chair.

Thursday, March 11, 1841 (Journal, p. 268, Appendix).

The Vice President having retired from the chair for the purpose, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and, on counting the ballots, it appeared that the Hon. Samuel L. Southard had a majority, and was elected.

TWENTY-SEVENTH CONGRESS, FIRST SESSION.

(No election for President pro tempore this session. Mr. Southard continued to serve, the Vice President, John Tyler, having been inaugurated President of the United States April 4, 1841.)

TWENTY-SEVENTH CONGRESS, SECOND SESSION.

Tuesday, May 31, 1842 (Journal, p. 366).

(The Secretary called the Senate to order.)

The Hon. Samuel L. Southard, President pro tempore, being absent, and a communication addressed by him to the Senate resigning the appointment of President pro tempore, having been read by the Sec-

retary, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; and the Hon. William P. Mangum was duly elected.

(There were two ballots taken.)

TWENTY-SEVENTH CONGRESS, THIRD SESSION.

(No election for President pro tempore this session, Mr. Mangum continued to serve.)

TWENTY-EIGHTH CONGRESS, FIRST SESSION.

(No election for President pro tempore this session, Mr. Mangum continuing to serve.)

TWENTY-EIGHTH CONGRESS, SECOND SESSION.

(No election for President pro tempore this session, Mr. Mangum continuing to serve.)

Mr. Mangum continued to act as President pro tempore in the special session called Tuesday, March 4, 1845 (Journal, 28th Cong., 2d sess., p. 273, Appendix, extra session), until he administered the oath of office to Hon. George M. Dallas, Vice President of the United States, on that day.

(There was no President of the Senate following the adjournment of this special session of the Senate.)

TWENTY-NINTH CONGRESS, FIRST SESSION.

Saturday, December 27, 1845.

In the absence of the Vice President, Mr. George M. Dallas, Mr. Sevier having taken the chair, presented a note from the Vice President, which was read by the Secretary, requesting Mr. Sevier to act as presiding officer of the day.

The Journal was then about to be read, when Mr. Crittenden arose and made objection to the irregularity of this proceding.

Mr. Crittenden moved to proceed to the election of a President pro tempore, with a view to test the question.

After some discussion for and against the resolution Mr. Crittenden withdrew it, and Mr. Sevier was permitted to occupy the chair for the day.

On this date, December 27, 1845, the twenty-second rule of the Senate was as follows:

> The Vice President, or President of the Senate pro tempore, shall have the right to name a Member to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment. (Adopted January 3, 1820.)

(No mention is made in the Senate Journal of any of the proceedings above noted. For proceedings see Congressional Globe, 29th Cong., 1st sess., pp. 95–96:)

In the absence of the Vice President, Mr. Sevier having taken the chair, presented a note from the Vice President, which was read by the Secretary, requesting Mr. Sevier to act as presiding officer of the day.

The Journal was then about to be read, when

Mr. Crittenden rose, and made objection to the irregularity of this proceeding. He had no kind of personal objection to the honorable Senator who was in the chair—very far from it. He was as willing to see that Senator in the

chair as any other Member of the body; but it occurred to him that the Vice President had no right to commission any one to preside over the body It was a matter for the Senate itself to determine, in the absence of the presiding officer.

The Secretary, at the request of several Senators, read the rule upon the subject, as follows:

"The Vice President, or President of the Senate pro tempore, shall have a right to name a Member to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment."

Mr. Speight observed that he could see no other construction of the rule than that which had been placed on it by the Vice President—that he had the right to name a Member, in his absence, to perform the duties of the Chair.

Mr. Crittenden moved to proceed to the election of a President pro tempore, with a view to test the question.

Mr. Calhoun did not clearly recollect any similar case. The Secretary had been long here, and he [Mr. Calhoun] would be glad to hear from him if there was any precedent.

Mr. Crittenden did not know of an instance where the Vice President exercised this power during the 10 or 12 years he had been a Member of the body.

Mr. Sturgeon thought there had been a number of precedents since he had occupied a seat here. He believed that Mr. Southard, formerly the presiding officer of the Senate, appointed a Member to discharge the duties of the Chair, in the mode pursued on the present occasion, during that gentleman's absence in Virginia. He thought there were other cases. There was no doubt on his mind of the correctness of the course.

The Chair [Mr. Sevier] rose to put the question on the motion to proceed to an election; when

Mr. Crittenden said he thought the case of Judge Southard was provided for by special resolution of the Senate.

Mr. Haywood, to relieve the Senate from the difficulty, moved that the Senate adjourn.

The question was taken, and decided in the negative.

Mr. Mangum understood that there was some difficulty with reference to the qualification of the officer presiding. He knew what had been done in many similar instances by Mr. Southard, before he went to Virginia for his health. After that time, however, a resolution may have been passed by the Senate, and it could be found, if there was one. So little doubt did he [Mr. Mangum] entertain in relation to this matter, that he took occasion to state to the Vice President that, if he designed being absent until Monday, he could give an appointment in writing, according to usage, as he understood it. It was perfectly easy, however, to obviate any difficulty by resolution or by ballot. He desired to state that the Vice President had derived the information from him, and at the time he did not suppose there would be difficulty or embarrassment.

Mr. T. Clayton said that when Mr. Southard appointed a substitute a question was raised whether it should be by a general commission, or renewed day by day. That gentleman was subject to a disease which frequently rendered him unable to perform the duties of the Chair, and when compelled to go to Virginia, had repeatedly exercised the power of appointing a substitute, and it was not objected to. He repeated, that the only difficulty which arose was, whether there should be a general appointment during the absence of Mr. Southard, or whether he should leave a number of papers, dated from day to day, that the substitute might be thus authorized to take the chair.

Mr. Calhoun said that the rule of the Senate gave the Vice President the power to appoint a substitute. If there was any doubt it was because the gentleman was not in the District. He may be out of the city. Believing, however, that the rule contemplated that he may appoint a substitute for one day, he could not vote for the motion of the Senator from Kentucky.

Mr. Crittenden said he made the motion without much consideration, as there seemed to him to be an irregularity in the proceeding. But he would now withdraw it.

The motion was therefore withdrawn.

Saturday, August 8, 1846 (Journal, p. 503).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and

on counting the ballots it appeared that the Hon. David R. Atchison was duly elected.

(For fuller proceedings see Congressional Globe, pp. 1209, 1210, as follows:)

SATURDAY, AUGUST 8, 1846.

The Secretary announced that the business first in order was the election of a President pro tempore, and requested Senators to prepare their ballots.

The ballots having been cast, Mr. Allen rose and suggested that the counting of the ballots be deferred for 20 minutes, as the Senate was not now full.

Mr. Crittenden objected to any delay.

Mr. Allen would then move that the election be postponed till 12 o'clock.

Mr. Crittenden hoped the Secretary would proceed in the discharge of his duty.

Mr. Allen thought it could not be doubted that some sort of a motion such as he had made was in order.

Mr. Crittenden wished to reply to the remark of the Senator from Michigan, and tell him in what sense he [Mr. Crittenden] regarded the officer of the Senate as uncontrollable. He meant that he was uncontrollable by any regular parliamentary procedure. He objected to the motion of the Senator from Ohio because it was against all precedents. It was manifestly improper, as likely to consume the time of the Senate—and for what reason? Simply because a result was anticipated by some gentlemen not in accordance with their wishes.

Mr. Allen requested the Secretary to read the rule applicable to the case.

The Secretary read the rule.

Mr. Cass remarked that the Secretary was certainly under the control of the Senate. He [Mr. Cass] did not know what was meant by saying that he is irrestrainable.

Mr. Archer wished that, in order to save the time of the Senate, the Senator from Ohio would withdraw his motion. His object would be gained at all events, as it was not at all probable that there would be a choice on the first balloting.

Mr. DAVIS. How do you know that?

Mr. ARCHER. Well, I think so.

And then Mr. Allen withdrew his motion.

The balloting then proceeded until the eighth ballot, when Mr. Atchison was duly elected. (Ballots omitted.)

TWENTY-NINTH CONGRESS, SECOND SESSION.

Monday, January 11, 1847 (Journal, pp. 91–92).

The Vice President being absent, the following communication was read:

Senator Atchison will oblige me by opening the Senate to-day, and by presiding therein until its adjournment.

G. M. DALLAS,
Vice President of the United States and President of the Senate.

WASHINGTON, *January 11, 1847.*

The following resolution was submitted by Mr. Crittenden, and considered by unanimous consent:

Resolved, That the Hon. D. R. Atchison be, and he is hereby, appointed President pro tempore of the Senate during the absence of the Vice President and until he resumes his seat as the presiding officer of this body.

On motion by Mr. Sevier, that the resolution lie on the table,

It was determined in the negative, {Yeas---------- 20
Nays---------- 27

On motion by Mr. Badger,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Allen, Ashley, Atherton, Bagby, Breese, Bright, Calhoun, Cass, Chalmers, Dickinson, Dix, Fairfield, Houston, Niles, Rusk, Sevier, Speight, Sturgeon, Turney, and Yulee.

Those who voted in the negative are,

Messrs. Archer, Badger, Benton, Berrien, Butler, Cameron, Cilley, Thomas Clayton, John M. Clayton, Corwin, Crittenden, Davis, Dayton, Greene, Huntington, Jarnagin, Johnson of Maryland, Johnson of Louisiana, Mangum, Miller, Pearce, Phelps, Simmons, Upham, Webster, Westcott, and Woodbridge.

The resolution having been amended, on the motion of Mr. Bagby, as follows:

Resolved, That the Senate proceed forthwith to the election of a President of the Senate pro tempore;

On the question to agree thereto,

It was determined in the affirmative.

The Senate accordingly proceeded to the election of a President pro tempore, and the Hon. David R. Atchison was duly elected. (See Congressional Globe, pp. 161 to 164, for fuller proceedings.)

Monday, January 11, 1847 (Congressional Globe, pp. 161 to 164).

The Senate having been called to order, Mr. Atchison presented the following note from the Vice President:

"WASHINGTON, *January 11, 1847.*

"Senator Atchison will oblige me by opening the Senate to-day, and by presiding therein until its adjournment.

"VICE PRESIDENT OF THE UNITED STATES
AND PRESIDENT OF THE SENATE."

The Senate did not recognize the authority of the Vice President to name a Senator to preside in his absence for a day, and elected Mr. Atchison President pro tempore to occupy the chair "during the absence of the Vice President, and until he resumes his seat as presiding officer of this body."

(For discussion of the question of the authority of the Vice President to designate a Senator to occupy the chair for a day, see the Congressional Globe, 29th Cong., 2d sess., pp. 161, 162, 163, 164. as follows:)

Monday, January 11, 1847.

The Senate having been called to order,

Mr. Atchison presented the following note from the Vice President:

"WASHINGTON, *January 11, 1847.*

"Senator Atchison will oblige me by opening the Senate to-day, and by presiding therein until its adjournment.

"G. M. DALLAS,

"*Vice President of the United States and President of the Senate.*"

Mr. Crittenden rose and said that it was with real reluctance that he was about to trouble the Senate with any remarks on this subject. Once before, at the last session, when a similar occurrence took place, he had felt it his duty, as a member of this body, to call the attention of the Senate to the question as to the right of the Vice President to delegate to any Senator he might name the authority to preside over the deliberations of the body during his absence from the chair. The question was then but little discussed, and as the proposition which he at that time made was offered without much consideration he had consented to withdraw it. He still thought, however, that the subject merited serious deliberation. Anything like personal or political considerations, in bringing up the matter again, he entirely disavowed. The Senator who had been named was to him perfectly unexceptionable. There was no gentleman in

that body who would be more agreeable to him as the occupant of the chair. The only object he had in rising was to vindicate the rights of the Senate, whose province it was to elect the Senator who should preside in the absence of the Vice President. If an election were now to be made, he had no doubt that the result would be the same. What he desired was that the appointment should be the act of the Senate—that the Senate should assert its right; and this course he trusted would be pursued. Entertaining these views, he would now offer a resolution, for the purpose of testing the sense of the Senate. If the Vice President had the right to nominate a substitute for a day, he had an equal right to appoint one for a week, for a month, or for a year. He concluded with submitting the following resolution:

"*Resolved*, That the Senate now proceed to the election of a President pro tempore."

Mr. Atchison said that as the course of proceeding was one in reference to which a diversity of opinion might properly exist, and as the right of the Vice President to appoint a substitute was denied, it might be the pleasure of the Senate to go into an election. He would, therefore, with the permission of the Senate, retire from the chair, and let the Secretary preside until the sense of the body shall have been ascertained.

[A general exclamation of "No! no!" "Read the rule."]

The rule was then read as follows:

"The Vice President or President of the Senate pro tempore shall have a right to name a Member to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment."

Mr. Speight said that, with all due deference, he thought the motion of the Senator from Kentucky quite unnecessary. The rule said that the Vice President could not name a substitute to act beyond one day. The nomination of the Senator from Missouri, therefore, was strictly and clearly within the meaning of the rule, and the practice of the Senate had conformed to it. There was no necessity for a departure from the course which was pursued last session. Then the Vice President was absent from the District, but now he is only prevented from taking his seat by a slight indisposition. It seemed to him to be a very plain case.

Mr. Sevier referred the Senator from Kentucky to the proceedings of the last session, when a similar appointment was acquiesced in. The Vice President was quite unwell and was not able to perform the duties of the Chair to-day. He would request his friend from Kentucky to withdraw his resolution. If the Vice President should continue to be indisposed for several days, there might be some reason for the interference of the Senate, and it would then be time enough to consider what course should be adopted. The case was settled at the last session. He hoped the Senator from Kentucky would allow the matter to stand over.

Mr. Atchison said that he felt the impropriety of occupying the chair during this discussion. He felt the great delicacy of his situation, and was desirous to retire from the chair.

Mr. Crittenden expressed his hope that the Senator from Missouri would retain the chair. He could do so with great propriety, as the unanimous consent of the Senate would, doubtless, be cheerfully given.

No objection being made, Mr. Atchison continued in the chair.

Mr. Badger thought the rule which had been read did not apply to the present case. This was a case, he thought, which the Constitution itself provided for when it declared that in the absence of the Vice President the Senate should appoint a President pro tempore. The Vice President, when absent from this Hall, was not the President of this body—he was only the Vice President of the United States; and when here, by virtue of his office, was the presiding officer of this body. It was, to his understanding, very plain that the Vice President could have no power to delegate his authority. The Senate, when they adopted the rule, did not intend to confer any such power on the Vice President. They knew their own rights too well to do this. The reason why the provision was introduced that the substitute should not retain the chair beyond the adjournment of the Senate was simply this: That no Member of the Senate should be called to the chair by the Vice President unless when he was temporarily called away during the sitting of the body.

Mr. Allen referred to the fact, not very remote as to time, when Mr. Southard occupied the chair. That gentleman was for a long time sick and unable to

preside for many successive days, when it was his constant practice to call a Senator to take the chair. He merely desired to state the fact, which seemed to bear in this case.

Mr. Badger briefly replied that although he was not a Member of the Senate at the time, he had a perfect recollection of the case referred to by the Senator from Ohio. It did not strike him that there was any analogy between that case and the present. The Vice President is not a Member of this body. He occupied the chair by virtue only of his official character. The Constitution confers on him no power to delegate the office to another; it is the province of the Senate, when he is not present, to appoint a President pro tempore to preside. When a President of our own choice, a Member of the Senate, occupies the chair, it is proper and right, during any unavoidable absence, that he should call on any other Member of the Senate to act for him. He had no undue jealousy with regard to the authority of the Vice President, but must insist that they could not authorize him, while absent, to appoint a substitute in face of the Constitution expressly declaring that in his absence the Senate should appoint that officer. He could not do it. If he was not in the chair, whether he was in Washington or New Orleans, it mattered not—he was absent from the Senate and could not, by note, letter, or other communication, appoint a substitute.

He would take occasion to say, as the Senator from Kentucky had said, that the Senator occupying the chair knew well that he [Mr. Badger] had no personal reference to him in the remarks he had made. There was no Senator who would fill the chair more gracefully, and none whom he would rather desire to see there.

Mr. Crittenden then modified his resolution, so as to read as follows:

"*Resolved*, That the Hon. D. R. Atchison be, and he is hereby, appointed President pro tempore during the absence of the Vice President and until he resumes his seat as presiding officer of this body."

Mr. Sevier considered that, according to the strict construction which the honorable gentleman from North Carolina [Mr. Badger] had given to the Constitution, all business of the Senate must cease if the Vice President should chance to be absent for five minutes. He thought the course which the Vice President had taken in this case was in accordance with the uniform practice of all parties, at all times, since the foundation of the Government. Why, then, was the question brought up at this time? The same thing had been done, in like circumstances, at the last session, when the Vice President left the city and appointed a substitute, and he could see no reason for making an exception to this general usage in the present case. He would suggest to his friend from Kentucky the propriety of introducing a proposition to change the rule, if he considered the rule unconstitutional, and then the course to be pursued would be well understood. If the Vice President should leave for an hour, we should then know what is to be done.

Mr. Berrien hoped the resolution of the gentleman from Kentucky would be acquiesced in, so as to render it unnecessary to go into an election at this time. What was the language of the rule? [Here the Senator read the rule.] The question is, whether this rule conforms to the Constitution. The words of the Constitution are emphatic: The Senate shall choose a President pro tempore. In the absence of the Vice President, the Senate shall choose a President pro tempore. The rule only provides that the Senate shall do what the Constitution says it shall do. It is unnecessary, then, to go into a discussion on the subject, when the rule indicates our course. He thought the objection raised by the gentleman from Arkansas unfounded, that the Vice President could not leave his seat for a few minutes without requiring the election of a President pro tempore, because it was only in the absence of the Vice President, acting as President, that the rule authorized him to name one who should occupy the chair during that day's business. But the Constitution expressly forbids the Vice President from appointing a substitute to preside over the Senate, the Vice President being absent at the time of making such appointment.

Mr. Calhoun said the question obviously turned on the word "absent," and all precedent had decided that the Vice President could vacate his chair for a single day without being considered as "absent." If he goes to the fire to warm himself, is he to be considered absent? If he goes into the outer room in the Capitol, is he to be regarded as absent? The question is, whether he may not leave the chair to warm his feet, or to go to the other end of the Capitol, or into the city, without being considered absent. Such construction had never

been given to the rule. In so nice a question precedent should govern them. If the Vice President can not leave the chair to converse with a friend, it would have a very inconvenient effect, unless he is understood to do it informally. If he is absent for a day, then the rule comes into operation and he can name a substitute.

A plausible argument might be advanced on both sides, however, but long practice ought to govern our decision. The best way, in his opinion, as the question was subject to some doubt, was to leave it undecided for the present and take it up at some future time. He would therefore vote against the resolution, and that not because he had the slightest objection to the Senator in the chair.

Mr. Badger inquired of the honorable gentleman from South Carolina [Mr. Calhoun] whether he considered the Vice President as now present or absent. If present, the present incumbent of the chair had no right there; if absent, then the Constitution declared that the Senate should elect a chairman pro tempore. He admitted, with the Senator from South Carolina, that the word "absence" admitted of various constructions; but still the question recurs: Is the Vice President now absent or present? With regard to this question, certainly the Vice President treated himself as absent, for he sent them a paper proposing some one to preside during his absence. If absent, the Constitution says the Senate shall choose a President pro tempore. If present, there is no necessity for any action.

Mr. Calhoun said he would answer the question of the gentleman from North Carolina if he would first answer a question for him Suppose the Vice President should go to the House to see some friend; would he be present or absent?

Mr. Allen admitted that this was a subject of some embarrassment. Had this been a new question, with nothing to weaken it on the one side or to strengthen it on the other, in the practice of this body, he would hesitate as to his course. But he thought that the meaning of the words "present" and "absent" quite obvious. He defined "present" to be that condition which qualified the Vice President for the discharge of the duties of his office. He could not see how he could be absent while sitting on a sofa in another part of the room for a few moments. If he should be sick and lying on that sofa, he would be constitutionally absent as much as if he were away from the Capitol, because he would be unable to discharge the duties of his office. There was a difficulty in the question, and he agreed with the Senator from South Carolina that the better course would be to reserve the question for the present, leaving it for future deliberation. If we adopt the resolution now, we establish a new principle and decide what should be left to a more convenient period. Therefore he concurred in the propriety of postponing it.

One more remark as to the distinction which had been made between the Vice President and a President pro tempore. They are regarded as the same in the rule. They are treated precisely alike. The authority to both is given in the same words. The Senate has acquiesced in this construction, and we ought to adhere to the practice now and select a more convenient time for the decision of the question. He thought, however, that they had better in the present case adhere to the previous usage of the Senate and select a more convenient time for discussing the matter.

Mr. Butler made some remarks, which, from his position under the gallery, were not heard with sufficient distinctness to be reported. He was opposed to the resolution, on the ground that, according to the spirit of the rule, the Vice President could not be regarded as absent.

Mr. Crittenden called for the reading of the Vice President's letter, which was again read.

Mr. Crittenden thought the Vice President had no more right to designate an officer to preside over the Senate than the President had to select some substitute to perform his duties. Up to the time of the appointment of Judge Southard as President of the Senate, when the Vice President became President of the United States, all precedent had favored the view which he had taken on this question. The case of Mr. Southard was attended by peculiar circumstances. That case seemed to be strongly relied on; and in that case he thought that gentlemen suffered friendship and courtesy to carry them a little beyond the bounds of propriety. Judge Southard was elected President pro tempore as a Member of the Senate. He was suffering in his last illness, and was for a long time disabled from taking the chair. He was highly esteemed and valued; and there was a willingness in the Senate then to allow the practice of naming a

substitute from day to day and from week to week, and this is urged as a precedent to govern us when no such circumstances exist.

The other instance brought forward was that of the present Vice President, who went away last session to visit his family in Philadelphia, when he named a substitute. The nomination was then acquiesced in, hastily, in his opinion. All his reflections had resulted in a conviction of the impropriety of the course. Important consequences may be involved in it if suffered to continue. He would say nothing about the various constructions of the word absence—whether going to the fire or the sofa or some other part of the Capitol was to be regarded as being absent. But there were other considerations of greater importance to be looked at, one of which was the security afforded by the appointment of a President of the Senate in case of the death of the Vice President. In his opinion the Vice President had no more right to appoint a substitute than the President has. The Constitution gives no such power, and if it is exercised it is in opposition to the rights of this body. Our powers are given us not exclusively for our own benefit, but for others, and we have no right to limit them or to enlarge them.

In cases where the Vice President temporarily leaves the chair and calls another to occupy it, we make no election, but consider him still in the chair. But when he is confined at home by sickness it is the absence contemplated by the Constitution. The daily journal of proceedings shows who is the occupant of the chair, and it is necessary that it should show him to be either the official President or a President pro tempore. He had no feeling on the subject—no personal objection to anyone; but it was necessary for the dignity of this body that it should retain in its own hands the exercise of its own powers, especially in the appointment of a presiding officer. If the Vice President can name a substitute for one day, he can do the same for a week or a month, and our rule is rendered nugatory. It is our duty to go into an election, and thus prevent the vacation of the chair by the Vice President without leaving a successor.

He asked the Senator from South Carolina [Mr. Calhoun], who, he remarked, presided so long and with so much characteristic ability over the deliberations of the Senate, if he ever undertook, under his sign manual, to designate a substitute. Hundreds of precedents might be quoted in support of the course he had taken, while only three solitary cases could be found against it. The inadvertencies of 60 years had been quoted, while one hundred good precedents had been lost sight of. The rare exceptions are taken, the practice of ninety-nine cases to the contrary notwithstanding. For some years past the Vice President has been the President of the Senate, and not a Member of this body. He has been a sort of peace officer, to keep order—an executive officer—grand marshal, and is it to be allowed that he shall consider himself authorized to place over our heads anyone he may name? He again disavowed any personal feeling. He had none. The resolution proved that he had none. He would most cordially vote for the Senator now in the chair; but he desired the right of the Senate to be vindicated in his appointment.

Mr. Badger said that he regarded it absolutely necessary that the question should now be decided. He had put to the Senator from South Carolina a question, whether, according to his construction of the Constitution, he thought the Vice President was this morning absent or present. The Senator from South Carolina, instead of answering, evades the question, saying he will answer my question when I shall have answered a question which he propounds. Now, if we have any purpose in this discussion beyond the mere bandying of words, if we have met in deliberation on the propriety of settling a rule as to the right action of this body, the Senator from South Carolina ought not to decline to answer a question which is before the Senate until he [Mr. Badger] should have answered another question not before the Senate.

Mr. Badger should have no difficulty, however, in answering the question put to him. Was the Vice President, then, when in the Representative Hall, present or absent? Undoubtedly he was absent, unless he possessed the attribute of ubiquity. As this attribute did not belong to him he had no hesitation in saying that if the Vice President was in the Representative Hall he was not in the Senate Chamber. He could not be personally present in this Hall and in the other. If he was absent from this Hall, he was absent according to the constitutional sense and according to common parlance. He would ask whether, if the Vice President came to the Capitol in the morning and went to the House of Representatives instead of the Senate, and wrote to a Senator to take his place, he had any power to do so?

The rule was to receive a reasonable interpretation, in accordance with the Constitution, and was never intended to be so construed as to overturn the practice of the Senate. What did the Constitution say? That the Senate—not may, but shall, in the absence of the Vice President, appoint a President pro tempore. And what was the rule? There was not a word in it which indicated in the slightest degree that this was to be done whenever the Vice President went out of the Chamber. The rule of the Senate permits him, when going out of this Chamber, to name a Senator to take the chair, but not to continue in it beyond the adjournment. He shall have power to name—where? In this Chamber. For what purpose? To occupy the chair. For how long? Not beyond the adjournment. The rule supposes the Senate to be in session. It applies to the Senate in session, and did not extend beyond adjournment. What, then, had the rule to do with a case like this? The Senate assembled this morning—the hour of meeting arrived—the Chaplain had offered up the usual supplication, but no Vice President appeared. The question, then, naturally arises: Is the Vice President absent or present? It is to be supposed that he is absent. For when the Constitution speaks of absence or presence it means as to this body—absent from or present in this body. We are, then, bound to elect a President pro tempore. There is no escape. If the rule gives the power to the Vice President to appoint, it is in direct opposition to the Constitution, and is therefore void. But the rule has no such purpose. It was competent for the Vice President to call a Member to preside during a temporary absence, but not beyond an adjournment.

The view of the Senator from Kentucky was conclusive under the rule. He could not see how the Vice President could absent himself all the session, and appoint a substitute day after day. It was the duty of the Senate to elect a President pro tempore. No time could be more appropriate for the settlement of this question, when it can be done without bias or passion. In regard to the selection of a presiding officer by the Senate, all, no donbt, would concur in the choice of the honorable gentleman named by the Vice President, but he wished him to be appointed by the proper authority.

Mr. Calhoun had no idea, when the subject was introduced, that he should make any remarks. He would now, however, ask permission to add a few more. He had no doubt that the subject had been brought forward from conscientious motives.

As to the two questions which had been put to him by the Senator, he would now answer, first, that he never did make an appointment of a substitute, for the reason that he was never absent from the chair. Had the occasion required any such course, he would have deliberated very much before he would have determined on his course. Secondly, as to whether a person appointed by the Vice President would, in the event of the death of the Vice President, stand in his place with reference to the Presidency. To this he would answer that he would not, because he would neither be the Vice President nor the President pro tempore. There are two points on which doubts may exist. What was the true interpretation of the rule which he had already noticed? He did not, however, give a positive opinion. Then as to the meaning of the word "absent"——

Mr. Badger. There is no such word in the rule.

Mr. Calhoun. First, what was the true construction of the rule? Without determining what was the true construction, he had said that he had his doubts. The whole question turned on the word "absent." The rule was not intended to be in repugnance to the Constitution. His own course was influenced by the practice of the Senate. The question, whether the rule conforms to the Constitution was not fairly before the Senate. He wished the practice to conform to the rule. The rule applied to the Vice President as well as the President pro tempore. There was no distinction. In the case of Mr. Southard, he was a long time ill, and the respect in which he was held induced the Senate to act toward him with great forbearance, in which both sides concurred. The rule did not contemplate that the Vice President should be always in the chair when he called a substitute. He might do it from his sick bed. There could be no party feeling mixed up with this question. The only object of all was to conform the practice of the Senate to the rule, and he would be willing to go into the subject at a proper time. The best way was now to vote down the resolution.

Mr. Sevier moved to lay the resolution on the table, with the view of referring the subject to the Committee on the Judiciary should the motion prevail.

Mr. Benton adverted to the practice of the Senate at the period when Mr. Gaillard presided. That practice continued until Mr. Southard was appointed. Then it was changed. He thought, at that time, that the change derogated from

the rights of the Senate. He did not remember that he made any remarks on the subject. He thought that the practice of naming a substitute from day to day was not consistent with the dignity and rights of the Senate, and that the proper way was to go into an election of a President pro tempore.

Some conversation here took place between Mr. H Johnson and Mr. Calhoun as to the time when the rule was adopted.

Mr. H. Johnson thought the construction put on the rule by the Senator from North Carolina [Mr. Badger] was the correct one.

Mr. Speight said it was adopted in 1819. (January 3, 1820.)

Mr. Badger called for the yeas and nays on Mr. Sevier's motion to lay the resolution on the table, and they were ordered.

Mr. Bagby said he should vote to lay the resolution on the table, for the purpose, in case the motion should prevail, of submitting a resolution to proceed to the election of a President pro tempore.

The question was then taken upon the motion of Mr. Sevier to lay the resolution on the table, and decided in the negative, as follows:

Yeas—Messrs. Allen, Ashley, Atherton, Bagby, Breese, Bright, Calhoun, Cass, Chalmers, Dickinson, Dix, Fairfield, Houghton, Niles, Rusk, Sevier, Speight, Sturgeon, Turney, Westcott and Yulee—21.

Nays—Messrs. Archer, Badger, Benton, Berrien, Butler, Cameron, Cilley, Thomas Clayton, John M. Clayton, Corwin, Crittenden, Davis, Dayton, Greene, Huntington, Jarnagin, Johnson of Maryland, Johnson of Louisiana, Mangum, Miller, Pearce, Phelps, Simmons Upham Webster, and Woodbridge—26.

The question then recurring upon the resolution of Mr. Crittenden,

Mr. Westcott stated that he had voted for laying the resolution on the table because the Senator from Alabama had intimated his purpose immediately to offer a resolution as a substitute for this, and he should cheerfully vote for it. He thought it was not competent to the Vice President to appoint a substitute while he was not in the chair. All the offices of the Senate should be filled up so as to provide against every contingency.

Mr. Atchison was about to make an intimation, when

Mr. Sevier rose to the question of order. The chair being vacant, the Secretary would have to receive the ballots, or preside until an appointment was made.

["Certainly, certainly," from all quarters.]

Mr. Atchison then left the chair.

Mr. Breese said he desired to make one or two remarks, and he would premise them by saying that no one who knew the honorable Senator from Kentucky would suppose for a moment that he had any other than the best and purest motives in offering the resolution under consideration. None other, he was satisfied, had actuated him.

Mr. Breese said if it was now for the first time to place a construction upon the twenty-third rule under which the Vice President had acted, in naming the Senator to preside for the day over the deliberations of the Senate, he did not know but that he should vote for the resolution; but the rule in question had received a construction by the uniform action of the Senate, as he was informed by older Members, ever since it was adopted, and in conformity with the act of the Vice President, and he submitted if long practice under the rule, acquiesced in without question as to its propriety, was not some evidence of the real meaning and intention of the rule. Mr. Breese said that the power given by the Constitution to the Senate to choose a President pro tempore in the absence of the Vice President was, if he recollected the history of the Senate, early called into exercise, as the Vice Presidents, in the younger days of the Republic, were not in the habit of attending the Senate at the opening of the session, but of being absent, and also of being absent some weeks previous to the adjournment, in order that the Senate might choose a President pro tempore who, in a certain contingency not very likely to happen, should exercise the powers of President of the United States. Such an election as this, Mr. Breese said, in the actual absence of the Vice President, gave to the President pro tempore who might be elected, all the powers of the Vice President, and the emoluments also pertaining to the place. Now the rule, Mr. Breese apprehended, was intended to provide only for temporary absence or present inability of the Vice President, in which casualties the Vice President or President pro tempore might name a Senator to perform the duties of the Chair, but which substitution should not extend beyond an adjournment, making it clear that such Senator named was in no respect to be considered as President pro tempore, but a mere substitute for the presiding officer, who would have no power to sign bills nor right to receive

the additional compensation provided by law, he acting merely for the day as a substitute.

Mr. Breese said it had been urged by the Senator from North Carolina [Mr. Badger] that the Vice President or President pro tempore must name the Senator who shall discharge the duties of the Chair from the chair itself. Mr. Breese said he did not think so; the rule does not confine him, and, he submitted, if such was the intention of the rule, if the phraseology would not have been different. It would have then been, Mr. Breese thought, shall have the right to "call" a Member to the chair. Giving him the right to name the Senator conferred upon him a power which could as well be exercised out of the Chamber as in it, and provided for casualties.

The same rule existed in regard to the Speaker of the House, and he [Mr. Breese] said he understood that the uniform practice under it had been for the Speaker, when absent from the House in case of sickness or other casualty, to name a Member to preside for the day.

Mr. Webster said he should vote for this resolution, although the practice of the Senate had been otherwise. The Vice President had now done what his predecessors had done, but it was an irregular practice, and it was time that an end should be put to it, and if an end were put to it now no one could impute any personal motive to the Senator moving in it. He should therefore vote for the resolution of the Senator from Kentucky, and then he hoped the rule would be taken up and referred. His recollection would not carry him back to the time when the alteration took place, but he was under the impression that the rule and practice of the Senate respecting the election of a President pro tempore had been changed. It appeared to him there had always been a President pro tempore to take the chair when the Vice President was absent, and that was the true course. He was not in the Senate at a period so early as that when Mr. Gaillard presided so great a portion of the session, but he thought he could not be mistaken in saying that the practice at that time was to elect a President pro tempore, and he remained President pro tempore whether in or out of the chair, ready to take it when the Vice President was not present. But then there comes a question of terminating, ipso facto, the office of the President pro tempore on the return of the Vice President. It was in these words: "When the Vice President resumes his chair the office of President pro tempore ceases." He knew not when that rule was adopted, but it was a matter of very great importance, in his judgment, that there should always be such an officer as a President pro tempore of the Senate, and therefore in that respect, the rule required reconsideration and revision. He could not help observing another thing which had happened, and which he hoped would not occur again. If he was not mistaken, at the extra session, after the inauguration of the Chief Magistrate, the Vice President did not vacate his seat till the final adjournment of the session, so that till the commencement of the next session there was no such officer as a President pro tempore of the Senate. Now, in the contemplation of law, more especially of the rule of Congress, there should be such an officer, who, in case of the death of the President and Vice President, became himself President. He did not know but it might have been an oversight, but the Vice President's not vacating the chair at the extra session had left the Senate no opportunity to appoint a President pro tempore. And what made it the more important was, as every Member of the Senate would see, that there was more than one-half of every other year in which there was no Speaker of the House of Representatives; that was, from the termination of the last session of a Congress there could be no such officer as Speaker of the House of Representatives until another session of Congress, when the Members came together and elected a Speaker. And what would be the consequence in such a case as that to which he had referred, viz, when there was no President pro tempore and no Speaker of the House of Representatives, if the President and Vice President should both die? In such a case, where would be the Government of the United States? These were important questions. He hoped, therefore, this rule would go to a proper committee for revision, and that such a course would be adopted as would enable the Government to have always such an officer, and that the Government would not be dissolved for want of a proper officer on whom the authority of the President and Vice President may devolve in case of emergency. He should therefore vote for this resolution, and if nobody else did, he would then move that the twenty-third rule be referred to some committee.

Mr. Calhoun said the Senator from Alabama [Mr. Bagby] had given notice that he would move the reference of the rule; and he now submitted to all

sides of the Senate whether, if there was a doubt respecting the interpretation of the rule, when it had been interpreted in one way for more than half a century, it was proper thus to change the practice. This was but the work of one day. Mr. Dallas would be there to-morrow, or a person would be appointed in his place, and was it worth while to consume an entire day in making such an appointment? Would it not be more proper to refer it to a committee? Let a committee examine it, and if the rule was wrong let it be altered. He did not think there was much in the question, but if there was a rational doubt let the rule be altered.

Mr. Bagby repeated what he had heretofore said, that if this resolution were laid on the table he would move to go into an election for President pro tempore, and in pursuing that course he was not at all influenced by the practice heretofore pursued in this body, for there were precedents both ways, and, indeed, almost every way. But the point which had struck him most was, that the organization of this body had been incomplete, not only for the dispatch of business, but in consideration of the provision of the Constitution. There was, in other words, an important officer absent, in whom to invest executive functions in certain contingencies. Now, whether the Vice President be present or absent, was a matter that was not of much moment. But if he were not here at his station he was, to all intents and purposes, absent. Beyond all doubt and controversy the Vice President was not now present, and the Constitution provided that when the Vice President was not here to perform the duties of Vice President in this body that then the Senate should choose their own President. There was great force in the observations of the Senator from South Carolina. An inquiry into that rule was proper; but in the meantime an appointment must be made from day to day in the absence of the Vice President, as was the case in the absence of Mr. Southard, and thus an officer might be sitting here without authority. He now, therefore, begged leave to move an amendment to the resolution of the Senator from Kentucky, by striking out all after the word *Resolved* and inserting "That the Senate proceed forthwith to the election of a President of the Senate pro tempore."

Mr. Crittenden said he was perfectly willing to accept that amendment. It would result in the same thing.

Mr. Webster briefly explained his previous remarks, which had been misunderstood by Senators around him.

The Secretary then put the question on the resolution of Mr. Crittenden, as modified on the motion of Br. Bagby, and it was adopted, 29 voting in the affirmative; the noes not counted.

The Senate then proceeded to ballot for President pro tempore. There were 48 ballots deposited, of which Mr. Atchison received 47 votes and Mr. Sturgeon 1.

Mr. Atchison was thereupon declared elected, and he took the chair accordingly.

The Journal of Thursday was then read and approved.

Mr. Sevier then renewed his motion to refer the twenty-third rule of the Senate to the Judiciary Committee, with instructions to inquire into the expediency of repealing it.

Mr. Berrien suggested an amendment, by the insertion of the words "or modify."

Mr. Sevier accepted the amendment.

After a brief explanatory conversation between Mr. Westcott and Mr. Berrien the motion was agreed to.

Wednesday, March 3, 1847 (Journal, p. 284).

AFTER 6 O'CLOCK IN THE EVENING.

The President having vacated the chair, in conformity with a previous announcement, a motion was made that the Senate proceed to the election of a President pro tempore, as the Constitution provides; whereupon,

On motion by Mr. Webster,

Resolved, unanimously, That the Hon. David R. Atchison be appointed the President of the Senate pro tempore.

THIRTIETH CONGRESS, FIRST SESSION.

Wednesday, February 2, 1848 (Journal, p. 147).

The Vice President being absent, on motion by Mr. Benton, and by unanimous consent,

Resolved, That the Hon. David R. Atchison be appointed President of the Senate pro tempore.

Thursday, June 1, 1848 (Journal, p. 364).

(The Secretary called the Senate to order at 12 o'clock.)

The Vice President being absent, the Senate proceeded to the election of a President pro tempore, as the Constitution provides; whereupon,

On motion by Mr. Benton,

Resolved, unanimously, That the Hon. David R. Atchison be appointed the President of the Senate pro tempore.

Monday, June 26, 1848 (Journal, p. 417).

(At 11 o'clock a. m., the Secretary of the Senate called the body to order.)

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides.

On motion by Mr. Benton,

Resolved, That the Hon. David R. Atchison be appointed President of the Senate pro tempore.

Saturday, July 29, 1848 (Journal, p. 508).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides.

On motion by Mr. Benton,

Resolved, That the Hon. David R. Atchison be appointed President of the Senate pro tempore.

THIRTIETH CONGRESS, SECOND SESSION.

Tuesday, December 26, 1848 (Journal, p. 81).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and,

On motion by Mr. Allen,

Ordered, That the Hon. David R. Atchison be appionted President of the Senate pro tempore.

Thursday, March 1, 1849 (Journal, p. 286).

The Vice President notified the Senate that he would, at 1 o'clock to-morrow, by retiring from the chair for the remainder of the session, afford the usual opportunity for the choice of a President pro tempore.

Friday, March 2, 1849 (Journal, pp. 293–295).

The Vice President addressed the Senate as follows:

Gentlemen of the Senate:

The close of my official term being near at hand, I conform to an established and convenient practice, by withdrawing from the deliberations of this body and thus creating the occasion for the choice of a temporary President.

* * * * * * *

And thereupon, in pursuance of the notice of yesterday, retired from the chair.

On motion by Mr. Benton, and by unanimous consent,

Resolved, That the Hon. David R. Atchison be appointed, in the absence of the Vice President, President of the Senate pro tempore.

PROCEEDINGS OF A SESSION SPECIALLY CALLED FOLLOWING THIRTIETH CONGRESS, SECOND SESSION.

Monday, March 5, 1849, 30th Cong., 2d sess. (Journal, p. 352, Appendix).

The Senate being called to order by the Secretary,

On motion by Mr. Davis of Massachusetts, and by unanimous consent,

Resolved, That the oath of office be administered by the Hon. Thomas H. Benton to the Hon. David R. Atchison, Senator-elect from the State of Missouri; and that he be, and hereby is, chosen President of the Senate pro tempore.

The oath prescribed by law was accordingly administered to the Hon. David R. Atchison, and he resumed the chair.

Friday, March 16, 1849 (Journal, pp. 366, 367, Appendix).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides.

On motion by Mr. Mangum,

Resolved, That the Hon. David R. Atchison be appointed President pro tempore.

THIRTY-FIRST CONGRESS, FIRST SESSION.

Thursday, May 2, 1850 (Journal, p. 319).

The Vice President notified the Senate that he would be absent at the next meeting of the Senate.

Monday, May 6, 1850 (Journal, p. 322).

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore.

On motion by Mr. Atchison, and by unanimous consent,

Resolved, That the Hon. William R. King be appointed President of the Senate pro tempore.

Wednesday, July 10, 1850 (Journal, p. 443).

(A few minutes past 11 o'clock the Senate was called to order by Asbury Dickens, Esq., its Secretary.)

The following communication, received by the Secretary of the Senate was read:

To the Senate of the United States:

In consequence of the lamented death of Zachary Taylor, late President of the United States, I shall no longer occupy the chair of the Senate, and I have thought that a formal communication to the Senate to that effect, through your Secretary, might enable you the more promptly to proceed to the choice of a presiding officer.

MILLARD FILLMORE.

WASHINGTON, *July 10, 1850.*

No election for President of the Senate pro tempore was had, but the Senate adjourned.

(Zachary Taylor, President of the United States, died July 9, 1850, and Millard Fillmore was inaugurated President of the United States July 9, 1850.)

Thursday, July 11, 1850 (Journal, p. 446).

(The Secretary called the Senate to order at 11 o'clock.)

The Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and,

On motion by Mr. Dickinson, and by unanimous consent,

Resolved, That the Hon. William R. King be appointed President of the Senate pro tempore.

THIRTY-FIRST CONGRESS, SECOND SESSION.

The Vice President having been inaugurated President, Hon. William R. King, having been appointed President pro tempore, when the vacancy in the office of Vice President happened, continued as President pro tempore during the entire second session of this Congress.

THIRTY-SECOND CONGRESS, FIRST SESSION.

The Vice President having been inaugurated President, the Hon. William R. King continued as President pro tempore during the entire first session of this Congress, excepting Thursday, July 8, 1852 (Journal, p. 515), and Friday, July 9, 1852 (Journal, p. 519), when the President pro tempore, by letters, designated Hon. D. R. Atchison to preside over the deliberations of the Senate on the two days mentioned. In each instance Mr. Atchison, by unanimous consent, took and resumed the chair.

THIRTY-SECOND CONGRESS, SECOND SESSION.

Hon. William R. King, President pro tempore, resumed the chair Monday, December 6, 1852 (Journal, p. 5).

And on Monday, December 13, 1852 (Journal, p. 29), Tuesday, December 14, 1852 (Journal, p. 34), Wednesday, December 15, 1852 (Journal, p. 36), and Thursday, December 16, 1852 (Journal, p. 38), the President pro tempore designated Hon. D. R. Atchison to preside over the Senate the days named.

Mr. Atchison, by unanimous consent, took the chair.

Monday, December 20, 1852 (Journal, p. 41).

(The Secretary called the Senate to order.)

The Hon. William R. King, President of the Senate pro tempore, being absent, the following communication, addressed by him to the Senate, was read by the Secretary:

WASHINGTON CITY, *December 20, 1852.*

SENATORS: The feeble state of my health renders me unable to discharge the duties of President pro tempore. Accept, I beg you, my resignation of the honorable position in which you had, with so much unanimity, placed me.

In taking leave of you, Senators, permit me to express my grateful acknowledgments for your uniform personal kindness and the generous support you have never failed to give me in my efforts to preserve order and enforce the parliamentary law. May a merciful Providence preserve to each of you the greatest of all earthly blessings—health.

With the highest respect and esteem, I am,

Your obedient servant,

WILLIAM R. KING.

* * * * * * *

Mr. Bright submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That the Hon. David R. Atchison be appointed President of the Senate pro tempore.

SPECIALLY CALLED SESSION, MARCH 4, 1853.

(Following the close of the Thirty-second Congress; Journal, 32d Cong., 2d sess., pp. 327, 331, Appendix.)

(Mr. Cass called the Senate to order.)

Mr. Shields submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, unanimously, That the Hon. David R. Atchison continue President pro tempore.

Whereupon the Hon. David R. Atchison resumed the chair.

THIRTY-THIRD CONGRESS, FIRST SESSION.

Hon. David R. Atchison, President pro tempore, resumed the chair and continued as presiding officer through the entire session (Hon. William R. King, Vice President having died early in the session, April 18, 1853) excepting on Monday, February 13, 1854 (Journal, p. 174), and Wednesday, July 5, 1854 (Journal, p. 474), he requested Mr. Bright and Mr. Badger to take the chair.

Mr. Bright and Mr. Badger, by unanimous consent, took the chair.

THIRTY-THIRD CONGRESS, SECOND SESSION.

Monday, December 4, 1854 (Journal, p. 5).

(The Secretary called the Senate to order at 12.30 o'clock p. m.)

The Senate being called to order, the following letter was read by the Secretary of the Senate:

PLATTE COUNTY, *November 11, 1854.*

DEAR SIR: It will not be in my power to reach Washington before the second or third week in December, and you will please announce this fact to the Senate at its meeting, that they may proceed to the election of a presiding officer.

Your obedient servant,

D. R. ATCHISON.

A. DICKENS, Esq.

On motion by Mr. Hunter, and by unanimous consent,

Resolved, That the Hon. Lewis Cass be President of the Senate pro tempore for this day.

There was no Vice President.

Tuesday, December 5, 1854 (Journal, p. 26).

(The secretary called the Senate to order.)
On motion by Mr. Jones of Iowa, and by unanimous consent,

Resolved, That the Senate do proceed forthwith to the choice of a President pro tempore.

Whereupon the Senate proceeded to choose, by ballot, a President pro tempore, and the Hon. Jesse D. Bright was duly elected.

[For fuller proceedings see Congressional Globe, Thirty-third Congress, second session, p. 4, for the discussion on agreeing to the above resolution.]

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. JONES of Iowa. I offer the following resolution:

"*Resolved*, That the Senate do proceed forthwith to the choice of a President pro tempore."

Mr. SEWARD. Before we proceed with this election I should like to have the views of Senators in regard to the effect of the appointment—whether it is to be an absolute appointment of a President pro tempore and what the tenure of his office is to be. I will state very freely my own opinion in going into this election, and it is this: That there can be but one person at the same time holding the office of President pro tempore of the Senate of the United States, and that that person will hold his office until it shall again constitutionally become vacant; so that in the case of a vacancy occurring in the office of the President of the United States, the person now to be chosen to fill the office of President pro tempore of the Senate would succeed to that high trust and become the Chief Executive Magistrate of the United States.

Mr. PETTIT. That is the way we understand it.

Mr. SEWARD. Then it is so understood.

Mr. BAYARD. I do not consider that there is any necessity for our determining what the effect of our resolution to elect a Presiding Officer of the Senate will be with regard to suppositive events which may occur hereafter. This proposition is simply that we elect a Presiding Officer. It is probable I might agree with the Senator from New York that there can not be two Presidents at one time; but there is no need of our entering into these questions. If we are disposed to elect, we do it for the purpose of conducting the business of the Senate; and I think we can leave such questions to the future as events may arise.

The resolution was agreed to.

The SECRETARY. Senators will please to prepare their ballots.

Mr. WELLER. I ask whether the rule can be suspended which requires that the selection shall be by ballot and whether I can not offer a resolution at once declaring that a certain Senator shall be President pro tempore?

Mr. STUART and others. It can be done by unanimous consent.

Mr. WELLER. I ask unanimous consent to offer a resolution declaring the Hon. Jesse D. Bright President pro tempore of the Senate.

SEVERAL SENATORS. It requires unanimous consent.

Mr. MASON. I think if the Secretary will refer to the precedents he will find that the Hon. David R. Atchison was chosen President of the Senate by a resolution. Probably the resolution was presented by unanimous consent.

Mr. DODGE of Iowa. It has been very often done.

Mr. SUMNER. Mr. Secretary, I must ask for the vote by ballot. If necessary, I shall object to the consideration of the resolution.

SEVERAL SENATORS. That is enough; we must proceed to ballot.

The SECRETARY. The Senators will please to prepare their ballots.

The Senators proceeded to ballot with the following result:

Hon. Jesse D. Bright received 24 votes; Hon. Salmon P. Chase, 6 votes; Hon. William C. Dawson, 2 votes; Hon. Solomon Foot, 2 votes; Hon. George E. Badger, 1 vote.

Whole number of votes cast, 35; necessary to a choice, 18.

The SECRETARY. Twenty-four being a majority of all the votes given, Mr. Bright is elected President of the Senate pro tempore.

Mr. JONES of Iowa and Mr. SHIELDS conducted Mr. Bright to the chair.

The PRESIDENT pro tempore (on taking the chair). Senators, the result just announced devolves upon me important responsibilities, and were it not for my intimate acquaintance and knowledge of those with whom I am to be associated in their discharge I should hesitate about accepting. Nine years' service in this body, however, has familiarized me somewhat with its rules and usages, and particularly with that spirit of kindness and forbearance uniformly observed and practiced by one Member toward another, which, let me assure you, serves in no small degree to lessen the embarrassment I should otherwise feel in attempting to preside over your deliberations. In accepting this trust, Senators, permit to say (that which I hope would have been taken for granted had I remained silent) that whatever ability I possess shall be employed in promoting the public interests by an impartial discharge of the duties belonging to the appointment you have just conferred. Less than this would be infidelity to the Constitution and the country and a betrayal of that confidence you have so generously reposed in me. For this unsolicited manifestation of your friendship and regard I offer you my grateful acknowledgments.

THIRTY-FOURTH CONGRESS, FIRST SESSION.

Hon. Jesse D. Bright being President pro tempore, on Monday, June 2, 1856 (Journal, p. 369), Thursday, June 5, 1856 (Journal, p. 371), and Monday, June 9, 1856 (Journal, p. 371), he designated Hon. Charles E. Stuart to take the chair.

Mr. Stuart, by unanimous consent, took the chair Monday, June 2, 1856.

On Thursday, June 5, 1856, the Journal entry is "Whereupon Mr. Stuart took the chair."

On Monday, June 9, 1856 (Journal, p. 371), Mr. Stuart did not take the chair, as requested by Mr. Bright; but

On motion by Mr. Butler, and by unanimous consent,

Resolved, That the Hon. Charles E. Stuart be elected President pro tempore.

Whereupon Mr. Stuart took the chair.

For further proceedings on the above resolution see Congressional Globe, Thirty-fourth Congress, first session, pages 1368–1369, as follows:

The Secretary read the following note from the President of the Senate:

JUNE 9, 1856.

SIR: Do me the favor to take the chair to-day.

Yours, truly,

J. D. BRIGHT.

Hon. CHARLES E. STUART.

Mr. Stuart took the chair and called the Senate to order.

The Journal of Thursday was read and approved.

APPOINTMENT TO THE CHAIR.

Mr. CRITTENDEN. Mr. President, I am sure the suggestion I am now about to make can be ascribed by no one to any personal consideration. It would give me great pleasure to vote for placing you in that chair, sir, but I object to the authority by which you now occupy it. I deny that the President of the Senate has any right, by letter, to delegate his power to preside over this body. A similar instance occurred once before in the Senate—I do not know whether any vote was taken upon it, but it was acquiesced in, and admitted on all sides, that he had not this power. Mr. Atchison, a particular friend of mine, then

occupied the chair. It is a small affair now, but I think the Senate ought to have a little care of its own rights.

I shall not take up the time of the Senate in discussing this question. I do not believe that the President of the Senate has any power, except he be present here, and authorizes, while he is present, another Member, for his personal relief, to act in his place for the moment; but to depute from day to day is more than he has a right to do. I think this is so plain and obvious that no argument is necessary on the subject. It would give me great pleasure to vote for you, sir; but I object to your presiding in that chair under the authority by which you are now sitting in it.

Mr. CLAYTON. I think this question is an important one. There is no man here whom I should be better pleased to see in the chair than yourself, sir, and I would vote for you with great pleasure, but I am very well satisfied that you have no authority, as derived from the President of this body, to occupy the chair. As remarked by the Senator from Kentucky, I think the President of the Senate can not confer the power.

The PRESIDING OFFICER. The Senate will indulge the Chair a moment in stating his own position. Undoubtedly the Senators who have spoken have spoken their precise feelings on this subject; and I think I may say with propriety that I have no desire to occupy this position. My action has been based upon the rule of the Senate, in compliance with the request of the President of the body. The twenty-third rule provides:

"The Vice President or the President of the Senate pro tempore shall have the right to name a Member to perform the duties of the chair, but such substitution shall not extend beyond an adjournment."

When the President of the Senate left the city, he left with me several appointments written by himself, which were to be presented each day, with a note stating to me how long he should be gone, and requesting me to present those notes to the Senate, and occupy the chair agreeably to his request. I shall certainly be willing to take any course that is agreeable to the Senate.

Mr. BUTLER. Mr. President, I recollect very well when this question arose before. I believe it was on the second day after I took my seat in the Senate; and I shall never forget the discussion which took place upon it in the course of the proceedings that followed. Mr. Dallas, then Vice President, was sick, or so unwell that he could not attend here in person. He wrote a note to Mr. Atchison, requesting him to take the chair while he was in the city. Some contended that, constructively, he was so far present in the Senate that he could call a Member to the Chair within the meaning of the rule which you have just read. A different view was taken by many. I recollect that Mr. Benton, of Missouri, then one of the oldest parliamentarians in the Senate, said that he agreed entirely with the proposition which had been suggested, that there is no such thing as the appointment of a Member to occupy the chair except by the Vice President or the President pro tempore in the Senate house itself, and that the substitution continued no longer than the adjournment of the Senate.

The delegation of authority, in writing, by the President of the Senate when he is not here is not what was contemplated by the rule; and it might lead, as you, sir, will readily see, to great abuse. I recollect the course of proceedings on the occasion to which I have alluded was unanimously to elect Gen. Atchison to the chair.

Mr. CLAYTON. Make that motion now.

Mr. BUTLER. I move that the honorable gentleman who now occupies the chair be unanimously elected President pro tempore.

Mr. CLAYTON. I second the motion.

Mr. DOUGLAS. Let the Secretary put the question.

Mr. Cass rose at his desk and said: I will put the question. It is moved that my colleague [Mr. Stuart] be appointed to occupy temporarily the chair of the President of the Senate.

The motion was unanimously agreed to.

Wednesday, June 11, 1856 (Journal, p. 374).

The Hon. Charles E. Stuart having resigned the appointment as President of the Senate pro tempore, submitted the following resolution:

Resolved, That the Hon. Jesse D. Bright be appointed the President pro tempore.

The Senate proceeded, by unanimous consent, to consider the resolution; and the resolution was agreed to.

Whereupon the Hon. Jesse D. Bright resumed the chair.

For additional proceedings on the above resolution see Congressional Globe, Thirty-fourth Congress, first session, pp. 1385–1386, as follows:

PRESIDENCY OF THE SENATE.

The PRESIDENT pro tempore (Mr. Stuart). Gentlemen of the Senate, when I assumed the duties of the Chair a few days since, in obedience to a request of the then Presiding Officer, and when, subsequently, the Senate of the United States did me the honor of making me its Presiding Officer by a vote, I of course felt gratified for this manifestation of your confidence. The object for which I assumed these functions having been accomplished, it is alike my duty and pleasure to resign the trust into the hands of the Senate.

Mr. STUART (from his seat in the Senate Chamber). Mr. Secretary, I move that the Hon. Jesse D. Bright, Senator from Indiana, be elected President pro tempore of the Senate.

The Secretary put the question; and the motion was unanimously agreed to.

The PRESIDENT pro tempore (Mr. Bright in the chair). Senators, I am placed under renewed obligations to the Members of this body for again appointing me to preside over their deliberations; and in making my grateful acknowledgment for so distinguished a mark of their favor, I beg to add that, in requesting the honorable Senator from Michigan [Mr. Stuart] to preside during my absence, I but followed precedent after precedent to be found in the Journal of the Senate's proceedings to two of which, with the permission of the Senate, I will briefly refer.

On July 8, 1852, the following note was presented from Mr. King, then the President pro tempore of the Senate, addressed to the Hon. David R. Atchison:

JULY 7, 1852.

MY DEAR SIR: Will you do me the favor to preside over the deliberations of the Senate to-morrow?

Very respectfully, WILLIAM R. KING.

The Journal adds:

"Mr. Atchison, by unanimous consent, took the chair."

On the day following, Mr. King addressed to Mr. Atchison another note of a similar character:

MY DEAR SIR: Will you do me the favor to preside over the Senate to-day?

"With great respect,

WILLIAM R. KING.

"Mr. Atchison, by unanimous consent, resumed the chair."

I have referred to these two precedents, and might refer to several others, but shall allude to but one, which was as early as Wednesday, March 23, 1842:

"Mr. King of Alabama took the chair at half past 12 o'clock. He remarked that he had been requested to do so by a note which he received from the President pro tempore, who was detained at home by indisposition. There was a rule, he believed, which required that in case of the indisposition of the President he could designate any Senator to occupy his place for one day.

"Mr. Clay coincided with that construction of the rule, and remarked that, when he presided over the House, he had acted under such interpretation of the rule."

In addition to these, there are other precedents, when Mr. Southhard, being President pro tempore of the Senate from day to day for several weeks, appointed various Members of the Senate to occupy the chair.

In requesting my friend from Michigan to occupy the chair for two or three sittings, I certainly did not intend to assume, in the slightest degree, authority which I did not think was warranted by usage and sanctioned by the highest and plainest precedents.

(There was a vacancy in the office of the Vice President by reason of the death of Hon. William R. King on April 18, 1853, during the whole of the time of the Thirty-fourth Congress. Mr. Bright resumed the chair at the beginning of the Thirty-fourth Congress, second session, Thursday, August 21, 1856, Journal, p. 658.)

THIRTY-FOURTH CONGRESS, THIRD SESSION.

Monday, January 5, 1857 (Journal, p. 67).

On this day Hon. Jesse D. Bright, President pro tempore, requested Hon. James M. Mason to officiate in the chair;

Whereupon,

Mr. Mason, by unanimous consent, took the chair.

Tuesday, January 6, 1857 (Journal, p. 71).

The President of the Senate pro tempore being absent,

On motion by Mr. Cass,

The Senate proceeded to the choice of a President pro tempore; and, the ballots being counted, it appeared that the Hon. James M. Mason had a majority, and was elected.

SESSION SPECIALLY CALLED FOLLOWING THE CLOSE OF THE THIRTY-FOURTH CONGRESS.

Wednesday, March 4, 1857 (Journal, 34th Cong., 3d sess., p. 376).

The Senate being called to order (by the Secretary), Mr. Douglas submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the oath of office be administered by the Hon. James A. Pearce to the Hon. James M. Mason, Senator-elect from the State of Virginia, and that he be, and hereby is, chosen President of the Senate pro tempore.

Whereupon the oath of office was administered to the Hon. James M. Mason, and he took the chair.

Saturday, March 14, 1857 (Journal, p. 396).

The Vice President having retired,

On motion by Mr. Fitzpatrick,

The Senate proceeded to the election of a President pro tempore by ballot; and

On counting the ballots it appeared that the Hon. Thomas J. Rusk had a majority and was duly elected.

The President pro tempore, on taking the chair, addressed the Senate as follows:

SENATORS: I thank you for the honor you have just conferred. It shall be my effort to deserve it by a just and impartial discharge, to the best of my ability, of the duties which your confidence has devolved upon me.

THIRTY-FIFTH CONGRESS, FIRST SESSION.

Monday, December 7, 1857 (Journal, p. 6).

(The Secretary called the Senate to order.)

The following letter having been read by the Secretary:

LOUISVILLE, KY., *November 28, 1857.*

DEAR SIR: It will be impossible for me to be in attendance during the first week of the approaching Congress, and I beg you to communicate the fact to the Senate in the mode customary upon such occasions.

Yours, very respectfully,

JOHN C. BRECKINRIDGE.

ASBURY DICKENS, Esq.,
Secretary of the Senate, Washington City, D. C.

Mr. Benjamin submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That the oath prescribed by the Constitution be administered to the new Senators by the Hon. Jesse D. Bright, the oldest member of the Senate present.

* * * * * * *

Mr. Allen submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved (the Vice President being absent), That the Senate proceed to choose by ballot a President of the Senate pro tempore.

Whereupon, the Senate proceeded to choose, by ballot, a President pro tempore, and, on counting the ballots, it appeared that the Hon. Benjamin Fitzpatrick had a majority and was duly elected.

Mr. Fitzpatrick thereupon resumed the chair.

Monday, March 29, 1858 (Journal, p. 288).

(Chief Clerk called the Senate to order.)

The Vice President being absent, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides; and, on counting the ballots, it appeared that the Hon. Benjamin Fitzpatrick was duly elected.

Mr. Fitzpatrick thereupon resumed the chair.

Monday, June 14, 1858 (Journal, p. 717).

The Vice President having retired, Mr. Slidell submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved (the Vice President being absent), That the Senate now proceed to the election of a President of the Senate pro tempore.

The Senate proceeded to the election of a President pro tempore by ballot; and, on counting the ballots, it appeared that the Hon. Benjamin Fitzpatrick had a majority, and was duly elected.

The President pro tempore, on taking the chair, addressed the Senate as follows:

SENATORS: I am gratified by this renewal of your confidence, and I assure you that I will endeavor, to the best of my ability, to discharge the duties of the Chair faithfully and impartially.

THIRTY-FIFTH CONGRESS, SECOND SESSION.

Wednesday, January 19, 1859 (Journal, p. 161).

(The Secretary presided.)

The Vice President being absent,

On motion by Mr. Bright, that Mr. Fitzpatrick be President of the Senate pro tempore, the Secretary submitted the motion to the Senate, and it was unanimously agreed to.

Mr. Fitzpatrick thereupon took the chair.

Tuesday, January 25, 1859 (Journal, p. 181).

The Vice President being absent, the Secretary called the Senate to order.

On motion by Mr. Bright, and by unanimous consent,

Resolved, That the Hon. Benjamin Fitzpatrick be appointed President of the Senate pro tempore.

Mr. Fitzpatrick thereupon took the chair.

A SESSION SPECIALLY CALLED FRIDAY, MARCH 4, 1859.

(Following the close of the Thirty-fifth Congress.)

Wednesday, March 9, 1859 (Journal, 35th Cong., 2d sess., p. 494).

The Vice President having retired, Mr. Bright submitted the following resolution, which was considered by unanimous consent and agreed to.

Resolved, That, in the absence of the Vice President, the Hon. Benjamin Fitzpatrick be, and he is hereby, chosen President of the Senate pro tempore.

Mr. Fitzpatrick thereupon took the chair.

THIRTY-SIXTH CONGRESS, FIRST SESSION.

Monday, December 19, 1859 (Journal, p. 13).

(The Secretary called the Senate to order.)

The Vice President being absent, the Secretary called the Senate to order.

On motion by Mr. Bright,

The Senate proceeded to the election of a President pro tempore; and, on counting the ballots, it appeared that the Hon. Benjamin Fitzpatrick had a majority, and was duly elected.

Mr. Fitzpatrick thereupon took the chair.

Monday, February 20, 1860 (Journal, p. 168).

Mr. Fitzpatrick stated that the Vice President was prevented by indisposition from attending in the Senate.

On motion by Mr. Powell,

The Hon. Benjamin Fitzpatrick was chosen President of the Senate pro tempore.

Mr. Fitzpatrick thereupon took the chair.

Tuesday, June 12, 1860 (Journal, p. 619).

The Vice President being absent, on motion by Mr. Powell, and by unanimous consent, the Hon. Jesse D. Bright was chosen President of the Senate pro tempore.

Mr. Bright thereupon took the chair.

SESSION SPECIALLY CALLED TUESDAY, JUNE 26, 1860.

(Following the close of the Thirty-sixth Congress, Journal, first session, pp. 777, 781–782.)

The Vice President having retired, Mr. Bright submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That, in the absence of the Vice President, the Hon. Benjamin Fitzpatrick be, and he hereby is, chosen President of the Senate pro tempore.

Mr. Fitzpatrick thereupon took the chair.

THIRTY-SIXTH CONGRESS, SECOND SESSION.

Saturday, February 16, 1861 (Journal, p. 238).

The Vice President being absent, the secretary called the Senate to order.

On motion by Mr. Powell, and by unanimous consent,

Resolved, That Mr. Foot be appointed President of the Senate pro tempore.

Mr. Foot thereupon took the chair.

SESSION SPECIALLY CALLED MONDAY, MARCH 4, 1861.

(Following the close of the Thirty-sixth Congress, Journal, second session, p. 399.)

Saturday, March 23, 1861 (Journal, p. 424).

The Secretary called the Senate to order and read the following letter:

WASHINGTON, *March 22, 1861.*

SIR: It being my intention, in conformity with established usage, and with a view of affording the Senate an opportunity of choosing a President pro tempore, to retire for this session, after to-day. I request that you will communicate this intention to the Senate to-morrow, at the hour of meeting.

Yours, truly,

H. HAMLIN,
Vice President of the United States.

ASBURY DICKENS, Esq.,
Secretary of the Senate.

Mr. Hale thereupon submitted the following resolution:

Resolved, That in the absence of the Vice President, the Hon. Solomon Foot be, and he hereby is, appointed President of the Senate pro tempore.

The Senate proceeded by unanimous consent to consider the said resolution; and

The resolution was unanimously agreed to.

Mr. Foot thereupon took the chair, and addressed the Senate, as follows:

SENATORS: I receive this unanimous expression of your confidence and good will with a full recognition of the personal compliment which it implies, and, I trust, with a full appreciation of the direct and of the contingent responsibilities which it imposes. Not altogether unaccustomed to the duties of a presiding officer, I have learned something of the delicacy and difficulty which the best efforts to a faithful discharge of those duties not unfrequently involve. Experience has, indeed, taught me the necessity of relying very largely upon the aid of your kind cooperation and of your indulgent forbearance—a cooperation and a forbearance which, I am pleased to say, I have never seen wanting in this body. * * *

THIRTY-SEVENTH CONGRESS, FIRST SESSION.

Thursday, July 18, 1861 (Journal, pp. 55, 56).

The Secretary called the Senate to order and read the following letter:

SENATE CHAMBER, *July 17, 1861.*

SIR: Intending to be absent from the Senate during the residue of the present session, after to-day, I request that this intention be made known to the Senate to-morrow morning at the hour of meeting.

Very respectfully, your obedient servant,

H. HAMLIN,
Vice President of the United States.

JOHN W. FORNEY, Esq.,
Secretary of the Senate.

Mr. Pearce submitted the following resolution, which was considered, by unanimous consent, and agreed to:

Resolved, That in the absence of the Vice President the Hon. Solomon Foot be, and he hereby is, chosen President of the Senate pro tempore.

Mr. Foot thereupon took the chair.

THIRTY-SEVENTH CONGRESS, SECOND SESSION.

Wednesday, January 15, 1862 (Journal, p. 110).

The Vice President being absent, the Secretary called the Senate to order.

On motion by Mr. Hale, and by unanimous consent, it was

Resolved, That the Hon. Solomon Foot be, and he is hereby, chosen President of the Senate pro tempore.

Mr. Foot thereupon took the chair.

Monday, March 31, 1862 (Journal, pp. 349–350).

The Secretary called the Senate to order, and read the following letter:

WASHINGTON, *March 28, 1862.*

SIR: Finding it necessary to be absent from the Senate on Monday next, I have to request that you will announce the fact to the Senate at 12 o'clock, the hour of meeting, with a view to the appointment of a President pro tempore.

I am, respectfully, your obedient servant,

H. HAMLIN,
Vice President of the United States.

Hon. J. W. FORNEY,
Secretary of the Senate.

On motion by Mr. Grimes, and by unanimous consent,

Resolved, That in the absence of the Vice President, the Hon. Solomon Foot be, and he is hereby, chosen President of the Senate pro tempore.

Mr. Foot thereupon took the chair.

Tuesday, June 19, 1862 (Journal, p. 669).

The Vice President being absent, the Secretary called the Senate to order and read the following letter:

SENATE CHAMBER, UNITED STATES, *June 18, 1862.*

SIR: Intending to be absent from the Senate to-morrow, I request that this intention be made known to the Senate to-morrow morning at the hour of meeting.

Very respectfully, your obedient servant,

H. HAMLIN,
Vice President of the United States and President of the Senate.

JOHN W. FORNEY, Esq.,
Secretary of the Senate.

Mr. Doolittle submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President, the Hon. Solomon Foot be, and hereby is, chosen President of the Senate pro tempore.

Mr. Foot thereupon took the chair.

THIRTY-SEVENTH CONGRESS, THIRD SESSION.

Wednesday, February 18, 1863 (Journal, p. 276).

The Vice President being absent, the Secretary called the Senate to order and read the following letter:

WASHINGTON, *February 17, 1863.*

SIR: Desiring to be absent from the seat of government for the residue of the present session after to-day, I have to request that you will communicate this desire to the Senate, with a view of its choosing a President pro tempore, as the Constitution provides.

I am, respectfully, your obedient servant,

H. HAMLIN,
Vice President of the United States and President of the Senate.

JOHN W. FORNEY, Esq.,
Secretary of the Senate.

Mr. Fessenden submitted the following resolution, which was considered by unanimous consent and agreed to.

Resolved, That, in the absence of the Vice President, the Hon. Solomon Foot be, and he hereby is, chosen Prsident pro tempore.

Mr. Foot thereupon took the chair.

SPECIALLY CALLED SESSION TO FOLLOW THE CLOSE OF THE THIRTY-SEVENTH CONGRESS.

Wednesday, March 4, 1863 (Journal, 37th Cong., 3d sess., p. 448).

The Secretary called the Senate to order and read the proclamation of the President of the United States convening the Senate at 12 o'clock this day.

Mr. Fessenden submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That the oath of office be administered to the Hon. Solomon Foot, as Senator-elect from the State of Vermont, by the Hon. La Fayette Foster, and that he be, and is hereby, chosen President of the Senate pro tempore.

Whereupon the oath prescribed by law was administered to Mr. Foot by Mr. Foster, and he took the chair.

THIRTY-EIGHTH CONGRESS, FIRST SESSION,

Friday, December 18, 1863 (Journal, p. 37).

The Vice President being absent, the Secretary called the Senate to order.

On motion by Mr. Hale, and by unanimous consent, the Hon. Solomon Foot was chosen President of the Senate pro tempore.

Mr. Foot thereupon took the chair.

Tuesday, February 23, 1864 (Journal, pp. 176, 177).

The Vice President being absent, the Chief Clerk called the Senate to order and read the following letter:

WASHINGTON, *February 22, 1864.*

SIR: I shall be absent from the city to-morrow. You will communicate information of this to the Senate at its session in the morning, and oblige,

Yours, very truly,

H. HAMLIN.

J. W. FORNEY, Esq., *Secretary of the Senate.*

On motion by Mr. Wilson, and by unanimous consent, the Hon. Solomon Foot was chosen President of the Senate pro tempore.

Mr. Foot thereupon took the chair.

Friday, March 11, 1864 (Journal, pp. 232, 233).

The Vice President being absent, the Secretary called the Senate to order and read the following letter:

WASHINGTON, *March 11, 1864.*

MY DEAR SIR: I shall be absent from the city to-day. Will you please communicate the information to the Senate and oblige.

H. HAMLIN.

J. W. FORNEY, *Secretary of the Senate.*

On motion by Mr. Wilson, and by unanimous consent, the Hon. Solomon Foot was chosen President of the Senate pro tempore.

Mr. Foot thereupon took the chair.

Monday, April 11, 1864 (Journal, pp. 313, 314).

The Vice President being absent, the Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, April 9, 1864.

SIR: I shall be absent from the city on Monday next. Please communicate information of this fact to the Senate on Monday morning.

H. HAMLIN.

Hon. J. W. FORNEY, *Secretary of the Senate.*

Mr. Wilson submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President, the Hon. Solomon Foot be appointed President of the Senate pro tempore.

Mr. Foot thereupon took the chair.

Tuesday, April 26, 1864 (Journal, p. 370).

The Vice President being absent, the Chief Clerk called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, April 25, 1864.

MY DEAR SIR: I expect to be absent from the Senate on and after to-morrow. and I desire you to communicate the information to the Senate.

Yours, truly, H. HAMLIN.

J. W. FORNEY, *Secretary of the Senate.*

Mr. Foot submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That in the absence of the Vice President, the Hon. Daniel Clark, of New Hampshire, be, and he is hereby, chosen President of the Senate pro tempore.

Mr. Clark thereupon took the chair.

THIRTY-EIGHTH CONGRESS, SECOND SESSION.

Thursday, February 9, 1865 (Journal, pp. 152, 153).

The Vice President being absent, the Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, February 9, 1865.

I shall be absent from Washington for several days from date. Please inform the Senate of this fact.

H. HAMLIN.

Hon. J. W. FORNEY, *Secretary of the Senate.*

Mr. Foot submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That in the absence of the Vice President the Hon. Daniel Clark, of New Hampshire, be, and he is hereby, chosen President of the Senate pro tempore.

Mr. Clark thereupon took the chair.

SESSION SPECIALLY CALLED SATURDAY, MARCH 4, 1865.

(Following the close of the Thirty-eighth Congress.)

Tuesday, March 7, 1865 (Journal, 38th Cong., 2d sess., p. 348).

The Vice President being absent, the Secretary called the Senate to order.

Mr. Clark submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That in the absence of the Vice President the Hon. Lafayette S. Foster, of Connecticut, be, and he is hereby, chosen President of the Senate pro tempore.

Mr. Foster thereupon took the chair.

THIRTY-NINTH CONGRESS, FIRST SESSION.

December 4, 1865 (Journal, p. 5).

The Hon. Lafayette S. Foster, President of the Senate pro tempore, resumed the chair.

The Vice President, Mr. Andrew Johnson, having been inaugurated President of the United States April 15, 1865, Mr. Foster continued to act as President pro tempore through the first session of this Congress and in the second session until March 2, 1867. (Journal, pp. 450, 451.) On that day he addressed the Senate at length and closed as follows:

* * * Senators, with feelings of the utmost respect and kindness towards you personally, I bid you farewell.

Mr. Foster, at the conclusion of his remarks, having retired, the Secretary of the Senate assumed the duties of the chair.

Mr. Anthony submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That the Hon. Benjamin Wade, of the State of Ohio, be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon, Mr. Wade was conducted to the chair by Mr. Anthony and Mr. Foster.

(Mr. Wade acted as President pro tempore through Thirty-ninth Congress, second session.)

FORTIETH CONGRESS, FIRST, SECOND, AND THIRD SESSIONS AND SESSION OF THE SENATE SPECIALLY CALLED ON MONDAY, APRIL 1, 1867.

There being a vacancy in the office of Vice President during this Congress and the session of the Senate specially called, the Hon. Benjamin F. Wade served as President of the Senate pro tempore

during the entire time, having been elected to said office March 2, 1867, after the Vice President had been inaugurated President of the United States for the term ending March 3, 1869.

FORTY-FIRST CONGRESS, FIRST SESSION.

Tuesday, March 23, 1869 (Journal, p. 74).

The Secretary called the Senate to order and read the following letter:

WASHINGTON, *March 22, 1869.*

DEAR SIR: Please inform the Senate, at its meeting to-morrow, that I shall be absent from the city for a few days.

SCHUYLER COLFAX.

The SECRETARY OF THE SENATE.

Mr. Sumner thereupon submitted the following resolution:

Resolved, That in the absence of the Vice President, the Hon. Henry B. Anthony, of the State of Rhode Island, be, and he is hereby, chosen President of the Senate pro tempore.

The Senate proceeded, by unanimous consent, to consider the said resolution, and the resolution was unanimously agreed to.

Mr. Anthony thereupon took the chair.

Thursday, April 8, 1869 (Journal, p. 142).

The Vice President stated that he would, after to-day, and for the residue of the session, vacate the chair, to enable the Senate, in conformity to a usage observed in the body, to choose a President pro tempore.

Friday, April 9, 1869 (Journal, p. 147).

The Vice President being absent, the Secretary called the Senate to order. Mr. Sumner submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That, in the absence of the Vice President, the Hon. Henry B. Anthony, of the State of Rhode Island, be, and he is hereby, chosen President pro tempore.

Mr. Anthony thereupon took the chair.

FORTY-FIRST CONGRESS, SECOND SESSION.

Saturday, May 28, 1870 (Journal, p. 729).

The Vice President announced to the Senate that he would be unavoidably absent at its next meeting on Tuesday next, and to enable the Senate to choose a President pro tempore he would now vacate the chair.

Thereupon Mr. Sumner submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That in the absence of the Vice President, the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Mr. Anthony thereupon took the chair.

Friday, July 1, 1870 (Journal, p. 925).

The Chief Clerk called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, July 1, 1870.

DEAR SIR: Please state to the Senate that having an engagement to speak on the 4th instant I am compelled to be absent from the city for a few days.

Respectfully, yours,

SCHUYLER COLFAX.

HON. GEORGE C. GORHAM,
Secretary United States Senate.

Mr. Sumner submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That in the absence of the Vice President, the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon, Mr. Anthony took the chair.

Thursday, July 14, 1870 (Journal, p. 1060).

The Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, July 14, 1870.

DEAR SIR: Please inform the Senate that I have retired from the duties of the Chair for the remainder of the session.

SCHUYLER COLFAX.

GEORGE C. GORHAM, Esq.,
Secretary of Senate.

Mr. Sumner submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That, in the absence of the Vice President, the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon, Mr. Anthony took the chair.

FORTY-FIRST CONGRESS, THIRD SESSION.

(The Vice President, Mr. Schuyler Colfax, served through this entire session and no one was chosen as President of the Senate pro tempore.)

FORTY-SECOND CONGRESS, FIRST SESSION.

Friday, March 10, 1871 (Journal, p. 19).

The Chief Clerk called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, March 10, 1871.

SIR: Please state to the Senate that I shall be absent from the city to-day.

Respectfully, yours,

SCHUYLER COLFAX.

HON. GEO. C. GORHAM,
Secretary of United States Senate.

Mr. Sumner submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That in the absence of the Vice President, the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon, Mr. Anthony took the chair.

Monday, April 17, 1871 (Journal, p. 133).

The Secretary called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, April 15, 1871.

DEAR SIR: Please inform the Senate, on its assembling Monday morning, that I shall not occupy the chair during the remainder of this session.

Respectfully, yours,

SCHUYLER COLFAX.

GEORGE C. GORHAM, Esq.,
Secretary United States Senate.

Mr. Sumner submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon Mr. Anthony took the chair.

SPECIALLY CALLED SESSION ON WEDNESDAY, MAY 10, 1871.

Tuesday, May 23, 1871 (Journal, 42d Cong., 1st sess., p. 178).

The Chief Clerk called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, May 23, 1871.

SIR: Please state to the Senate that I do not expect to occupy the chair during the remainder of this session.

SCHUYLER COLFAX.

GEORGE C. GORHAM, Esq.,
Secretary of the Senate.

Mr. Sumner submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That in the absence of the Vice President the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon Mr. Anthony took the chair.

FORTY-SECOND CONGRESS, SECOND SESSION.

Thursday, December 21, 1871 (Journal, p. 76).

The Secretary called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, December 21, 1871.

DEAR SIR: Please state to the Senate, at the opening of its session to-day, that I shall be absent from the chair, in order that a President pro tempore may be chosen.

Respectfully, yours,

SCHUYLER COLFAX.

Hon. GEORGE C. GORHAM,
Secretary United States Senate.

Mr. Sumner submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That in the absence of the Vice President the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon Mr. Anthony took the chair.

Friday, February 23, 1872 (Journal, p. 271).

The Secretary called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, February 23, 1872.

DEAR SIR: Please state to the Senate that I shall be out of the city to-day and to-morrow.

Respectfully, yours,
SCHUYLER COLFAX.

Hon. GEORGE C. GORHAM,
Secretary United States Senate.

Mr. Trumbull submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon Mr. Anthony took the chair.

Saturday, June 8, 1872 (Journal, p. 1004).

The Secretary called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, June 8, 1872.

DEAR SIR: Please state to the Senate on its reassembling that I shall not occupy the chair during the remainder of this session.

SCHUYLER COLFAX.

GEORGE C. GORHAM,
Secretary of the Senate.

Mr. Morrill of Vermont submitted the following resolution, which was considered by unanimous consent and unanimously agreed to:

Resolved, That in the absence of the Vice President the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon Mr. Anthony took the chair.

FORTY-SECOND CONGRESS, THIRD SESSION.

Wednesday, December 4, 1872 (Journal, p. 27).

The Vice President being absent, the Secretary called the Senate to order.

Mr. Hamilton submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

(Mr. Anthony took the chair.)

Friday, December 13, 1872 (Journal, p. 62).

The Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
December 12, 1872.

DEAR SIR: Please state to the Senate, when it assembles to-morrow, that I shall be at that time temporarily absent from the city.

Respectfully, yours,
SCHUYLER COLFAX.

Hon. GEORGE C. GORHAM,
Secretary United States Senate.

Mr. Frelinghuysen submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That, in the absence of the Vice President, the Hon. Henry B. Anthony be, and he is hereby, appointed President of the Senate pro tempore.

Whereupon, Mr. Anthony took the chair.

Friday, December 20, 1872 (Journal, p. 94).

The Vice President being absent, the Chief Clerk called the Senate to order.

Mr. Edmunds submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That, in the absence of the Vice President, the Hon. Henry B. Anthony be, and he is hereby, appointed President of the Senate pro tempore.

(Mr. Anthony took the chair.)

Friday, January 24, 1873 (Journal, p. 205).

The Secretary called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, January 24, 1873.

DEAR SIR: Please state to the Senate that I may be temporarily detained from its session during part of this afternoon.

SCHUYLER COLFAX.

HON. GEORGE C. GORHAM,
Secretary of United States Senate.

Mr. Wilson submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That, in the absence of the Vice President, the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon, Mr. Anthony took the chair.

SESSION SPECIALLY CALLED TUESDAY, MARCH 4, 1873, AT CLOSE OF FORTY-SECOND CONGRESS.

Wednesday, March 12, 1873 (Journal, 42d Cong., 3d sess., pp. 608, 609).

The Vice President being absent, the Chief Clerk called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, March 12, 1873.

GEORGE C. GORHAM, Esq.,
Secretary of the Senate.

DEAR SIR: Please inform the Senate that to-morrow and the next day I shall be absent from the city and shall not, on those days, occupy the chair.

Respectfully, yours,

HENRY WILSON,
Vice President of the United States and President of the Senate.

Whereupon, Mr. Anthony submitted the following resolution; which was considered by unanimous consent and unanimously agreed to:

Resolved, That, in the absence of the Vice President, the Hon. Matt. H. Carpenter be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon, Mr. Carpenter took the chair and addressed the Senate as follows:

SENATORS: I thank you sincerely for the honor you thus confer upon me, and the best assurance I can give you that I esteem and appreciate your kindness will be my constant endeavor to perform my duties faithfully and impartially.

Wednesday, March 26, 1873 (Journal, p. 624).

The Vice President being absent, the Secretary called the Senate to order, and Mr. Morton submitted the following resolution; which was considered by unanimous consent and unanimously agreed to:

Resolved, That, in the absence of the Vice President, Matt. H. Carpenter, a Senator from the State of Wisconsin, be, and he is hereby, chosen President of the Senate pro tempore.

(Mr. Carpenter took the chair.)

FORTY-THIRD CONGRESS, FIRST SESSION.

Thursday, December 11, 1873 (Journal, p. 59).

The Vice President being absent, the Secretary called the Senate to order.

On motion by Mr. Anthony,

The Senate proceeded to elect by ballot a President pro tempore; and the tellers having counted the ballots and reported the state of the vote, it appeared that the whole number of ballots cast was 48, of which the Hon. Matthew H. Carpenter received 32 and the Hon. Allen G. Thurman 16;

Whereupon, Mr. Carpenter, having received a majority, was declared duly elected, and he thereupon took the chair.

FORTY-THIRD CONGRESS, SECOND SESSION.

Wednesday, December 23, 1874 (Journal, p. 69).

The Chief Clerk called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, December 22, 1874.

To the CHIEF CLERK OF THE SENATE.

SIR: Please inform the Senate, when it assembles to-morrow, that I shall not be present.

Respectfully, your obedient servant, HENRY WILSON.

Whereupon, Mr. Anthony offered the following resolution:

Resolved, That in the absence of the Vice President, the Hon. Matthew H. Carpenter be, and he is hereby, chosen President of the Senate pro tempore.

The Senate proceeded to consider the said resolution, and, having been amended on the motion of Mr. Stevenson, the resolution was agreed to as follows:

Resolved, That in the absence of the Vice President the Senate do now proceed to the choice of a President of the Senate pro tempore by ballot.

The Senate thereupon proceeded to chose, by ballot, a President pro tempore, and, the tellers having counted the ballots and reported the state of the vote, it appeared that the whole number of ballots

cast was 51, of which the Hon. Matthew H. Carpenter received 33, and the Hon. Allen G. Thurman 18.

Whereupon Mr. Carpenter, having received a majority, was declared duly elected, and he thereupon took the chair.

Monday, January 25, 1875 (Journal, p. 152).

The Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Capitol, January 23, 1875.

To the Secretary of the Senate.

SIR: Please state to the Senate that indispensable engagements will prevent my attendance at the opening of the Senate Monday morning next.

Respectfully, yours,

HENRY WILSON.

Whereupon Mr. Boutwell submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President, the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Thereupon Mr. Anthony took the chair.

Monday, February 15, 1875 (Journal, p. 262).

The Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, February 13, 1875.

DEAR SIR: Please inform the Senate that absence from the city for two or three days will prevent me from being present at its session on Monday.

Respectfully, yours,

HENRY WILSON.

Hon. GEORGE C. GORHAM.

Whereupon Mr. Hamlin submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President, the Hon. Henry B. Anthony be, and he is hereby, chosen President of the Senate pro tempore.

Thereupon Mr. Anthony took the chair.

SESSION SPECIALLY CALLED FRIDAY, MARCH 5, 1875.

(One day after the close of the Forty-third Congress, Journal, p. 453.)

Tuesday, March 9, 1875 (Journal, 43d Cong., 2d sess., pp. 458, 459).

The Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, March 8, 1875.

DEAR SIR: Please state to the Senate that an absence from the city for two or three days will prevent me from being present to-morrow.

Very respectfully,

HENRY WILSON.

Hon. GEORGE C. GORHAM.

On motion by Mr. Anthony that the Senate proceed to the election of a President pro tempore,

It was determined in the affirmative, { Yeas---------- 53
Nays---------- 0

On motion by Mr. McCreery,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Alcorn, Allison, Anthony, Bayard, Bogy, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Caperton, Christiancy, Clayton, Conkling, Conover, Cooper, Davis, Dorsey, Eaton, Ferry of Connecticut, Ferry of Michigan, Frelinghuysen, Hamilton, Hamlin, Harvey, Howe, Ingalls, Johnston of Virginia, Jones of Florida, Kelly, Kernan, Logan, McCreery, McDonald, McMillan, Moxey, Merrimon, Mitchell, Morrill of Vermont, Norwood, Paddock, Randolph, Robertson, Sargent, Saulsbury, Sherman, Spencer, Stevenson, Thurman, Wallace, West, Whyte, Windom, Withers, and Wright.

So the motion was agreed to; and the Senate proceeded to elect a President pro tempore; and the tellers having counted the ballots and reported the state of the vote, it appeared that the whole number of ballots cast was 64, of which the Hon. Thomas W. Ferry received 39, and the Hon. Allen G. Thurman 25.

Mr. Ferry having received a majority, was declared duly elected, and he thereupon took the chair.

Friday, March 19, 1875 (Journal, pp. 467, 468).

The Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, March 18, 1875.

DEAR SIR: Please inform the Senate that I leave the city this evening and shall not be present during the remainder of the session.

Very truly, HENRY WILSON.

Hon. GEO. C. GORHAM.

Whereupon, Mr. Anthony submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President the Hon. Thomas W. Ferry be, and he is hereby, chosen President of the Senate pro tempore.

Mr. Ferry thereupon took the chair.

FORTY-FOURTH CONGRESS, FIRST SESSION.

December 17, 1875 (Journal, p. 63).

Mr. Edmunds submitted the following resolution, which was referred to the Committee on Privileges and Elections and ordered to be printed:

Whereas since the last session of the Senate the Vice President of the United States has deceased: Therefore

Resolved, That on the 7th day of January next, at 1 o'clock afternoon, the Senate will proceed to the election of a President pro tempore.

(For the discussion on this resolution, see Congressional Record, vol. 4, part 1, p. 240.)

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. EDMUNDS. Mr. President, I offer a resolution, which I ask may be read.

The Chief Clerk read the resolution, as follows:

"Whereas since the last session of the Senate the Vice President of the United States has deceased: Therefore,

"*Resolved*, That on the 7th day of January next, at 1 o'clock p. m., the Senate will proceed to the election of a President pro tempore."

Mr. EDMUNDS. Mr. President, I offer this resolution, and ask that it lie over and be printed, in order that during the recess Senators may look up the precedents and consider the important question which has been raised in the newspapers and otherwise in respect of the Speaker of the House of Representatives and the President of the Senate in the event of what in the course of life is a possible contingency. Although I have no doubt that the present Presiding Officer of the Senate is the President pro tempore under the Constitution, my own present opinion is that it is advisable, if there is any possible doubt about it or difference in the precedents, that the Senate should put the question absolutely at rest. For that reason I introduce this resolution and ask to have it laid over for consideration.

The PRESIDENT pro tempore. The resolution will be printed and laid over.

Mr. THURMAN. I suggest to the Senator from Vermont the propriety of referring the resolution to some appropriate committee and having a report upon it—either his own committee, the Committee on the Judiciary, or the Committee on Privileges and Elections, if that is the proper one—some committee that will examine it. If it is left to everybody, nobody will do it, unless it is the Senator from Vermont himself; but if it is referred to a committee we can have a report, and I think we ought to have a report upon it.

Mr. EDMUNDS. The Senator from Ohio knows that I never do anything unless I am forced to do it; but I am entirely willing that the resolution should be referred to any committee suggested by the Senator from Ohio or any other Senator, so that we can have an early report on it and have it disposed of.

Mr. BOUTWELL. I suggest that the Judiciary Committee would be the proper committee.

Mr. THURMAN. I move that it be referred to the Committee on Privileges and Elections.

The PRESIDENT pro tempore. The Senator from Ohio moves that the resolution be referred to the Committee on Privileges and Elections.

Mr. SAULSBURY. I am a member of the Committee on Privileges and Elections. I do not seek to avoid any proper duties belonging to that committee; but it strikes me that this is a question which more properly belongs to the Judiciary Committee. I therefore move to substitute for the "Committee on Privileges and Elections" the "Committee on the Judiciary."

The PRESIDENT pro tempore. The question is on the amendment offered by the Senator from Delaware to refer the resolution to the Committee on the Judiciary.

The amendment was agreed to.

The PRESIDENT pro tempore. The resolution will be printed and referred to the Committee on the Judiciary.

Mr. SAULSBURY subsequently said: I move to reconsider the vote by which the Senate, on my motion, referred the resolution offered by the Senator from Vermont [Mr. Edmunds] to the Committee on the Judiciary.

The motion to reconsider was agreed to.

Mr. SAULSBURY. Now I move that the resolution be referred to the Committee on Privileges and Elections.

The motion was agreed to.

Monday, December 20, 1875 (Journal, p. 67).

Mr. Edmunds submitted the following resolution for consideration:

Resolved, That Mr. Thomas W. Ferry, a Senator from the State of Michigan, be the President of the Senate until January 7, 1876, and until a fresh appointment shall be made.

The Senate proceeded, by unanimous consent, to consider the said resolution; and on motion by Mr. Bayard to amend the resolution by striking out Mr. Thomas W. Ferry, a Senator from the State of Michigan, and inserting "Mr. Allen G. Thurman, a Senator from the State of Ohio,"

It was determined in the negative, {Yeas 21 / Nays 24}

On motion by Mr. Bayard,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bayard, Bogy, Caperton, Cockrell, Cooper, Davis, Dennis, Eaton, English, Gordon, Johnston, Jones of Florida, Kennon, Key, McCreery, McDonald, Maxey, Randolph, Saulsbury, Wallace, and Withers.

Those who voted in the negative are,

Messrs. Anthony, Booth, Boutwell, Burnside, Cameron of Wisconsin, Conkling, Dawes, Edmunds, Frelinghuysen, Hamilton, Hamlin, Harvey, Hitchcock, Howe, Ingalls, McMillan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Sherman, Spencer, West, and Windom.

So the amendment was not agreed to.

On the question to agree to the resolution, it was determined in the affirmative. (See Congressional Record, vol. 4, pt. 1, p. 249.)

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. EDMUNDS. I have a resolution to submit, and before I offer it, or in connection with it, I wish to state, referring to a resolution that I introduced on last Friday touching the President of the Senate, that a further consideration of the subject, and some discussion of it, have led me to think that the public interests require that the question should not be open to any doubt during the interval between this day and the day of our next assembling. I therefore offer the following resolution and ask its present consideration:

"*Resolved*, That Mr. Thomas W. Ferry, a Senator from the State of Michigan, be the President of the Senate until January 7, 1876, and until a fresh appointment shall be made."

The PRESIDING OFFICER (Mr. Anthony in the chair). Is there objection to the present consideration of the resolution? The Chair hears none, and the question is on its passage.

Mr. SAULSBURY. I do not rise to interpose any objection to the consideration of the resolution, but it seems to me this resolution involves one of the questions which are now committed to the Committee on Privileges and Elections, namely, whether, the present incumbent of the chair having been appointed at the last session of the Senate of the United States, and having been in possession of the office of President pro tempore upon the happening of the death of the Vice President, that does not perforce continue him. That I understand to be one of the questions involved in the inquiry directed to the Committee on Privileges and Elections. This resolution assumes that such is not the fact, and I call attention to it, without, however, making any objection whatever to the resolution offered by the Senator from Vermont.

Mr. EDMUNDS. I have drawn this resolution in such a way as not to assume that we do not have a President pro tempore of the Senate at this very moment. The resolution does not declare in terms that he is appointed; it declares that he shall be; he may continue to be; he is already. If there is any legal quibble upon which he is not already the President of the Senate in the constitutional and legal sense, then this resolution cures it for the time being until inquiry shall be made and any step be taken upon this subject that the Senate chooses. I think, therefore, that we do not commit ourselves to anything except to the fact and the law that, pending this recess and until the Senate does act, we have a President of the Senate in the full constitutional and legal sense.

Mr. BAYARD. Mr. President, I ask that the resolution of the Senator from Vermont be again read.

The resolution was read by the Chief Clerk.

Mr. BAYARD. Mr. President, I move to substitute the name of "Allen G. Thurman, of Ohio"; and upon that I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Delaware moves to amend the resolution by substituting for the name of "Thomas W. Ferry, of Michigan," the name of "Allen G. Thurman, of Ohio"; and upon that amendment the yeas and nays are requested.

The yeas and nays were ordered; and the Chief Clerk called the roll.

Mr. ALLISON. I desire to say that my colleague [Mr. WRIGHT] was called suddenly home by illness in his family. I also desire to say that for this day I am paired with the Senator from North Carolina [Mr. Merrimon]. Regarding this as a political question, I decline to vote.

Mr. PADDOCK. I desire to state that on this question I am paired with the Senator from North Carolina [Mr. Ransom], who, if present, would vote for the amendment, and I against it.

Mr. KELLY (who had at first voted in the affirmative). I ask leave to withdraw my vote, as I am paired with the Senator from New Hampshire [Mr. Wadleigh] upon all political questions.

The PRESIDING OFFICER. The vote will be withdrawn, if there be no objection.

Mr. CRAGIN (who had at first voted in the negative). I ask leave to withdraw my vote. I am paired with the Senator from Georgia [Mr. Norwood] upon all political questions. I was not aware that this question would arise or that the pair went so far.

The PRESIDING OFFICER. The vote will be withdrawn, if there be no objection.

Mr. STEVENSON (who had at first voted in the affirmative). I voted under a misapprehension. The Senator from Pennsylvania [Mr. Cameron] and I agreed to pair, though it was rather confined to the pending resolution offered by the Senator from Indiana [Mr. Morton]; but inasmuch as the Senator from Pennsylvania is not here, I desire to withdraw my vote. This question was not contemplated at all; but still, as he may believe that I am paired with him, I prefer to respect his wishes, and I therefore withdraw my vote.

The PRESIDING OFFICER. The vote will be withdrawn, if there be no objection.

The result was announced—yeas 21, nays 24.

So the amendment was not agreed to.

The PRESIDING OFFICER. The question recurs on the original resolution.

The resolution was agreed to.

Mr. MORTON. In voting for this resolution, I desire not to be understood as expressing any opinion upon the question as to whether we had a President pro tempore before this resolution passed. I voted for the resolution in the spirit in which it was offered, as a mere matter of precaution.

Mr. MORRILL of Vermont. I desire to offer a resolution.

The PRESIDENT pro tempore. Senators, permit me to interrupt the business of the Senate by tendering my thanks for the renewal of your courtesy and confidence.

Thursday, January 6, 1876 (Journal, p. 76).

Mr. Morton, from the Committee on Privileges and Elections, to whom was referred the resolution submitted by Mr. Edmunds on the 17th December last, that on the 7th January instant, at 1 o'clock p. m., the Senate will proceed to the election of a President pro tempore submitted a report (No. 3) thereon. (See Congressional Record, vol. 4, pt. 1, p. 273.)

(This report is printed in full at the end of this compilation.)

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. MORTON. The Committee on Privileges and Elections, to whom was referred the following resolution—

"Whereas, since the last session of the Senate the Vice President of the United States has deceased: Therefore,

"*Resolved*, That on the 7th day of January next, at 1 o'clock afternoon, the Senate will proceed to the election of a President pro tempore"—

beg leave to submit a report on the subject; and I ask that it be printed and lie on the table.

The PRESIDING OFFICER (Mr. Anthony in the chair). That order will be made.

Mr. COOPER. As one of the Committee on Privileges and Elections, I am unwilling, differing as I do from some of the conclusions arrived at by the majority of the committee, to permit the report to be presented to the Senate without entering my dissent to certain conclusions of the committee. I refer especially to the conclusion that the President pro tempore of the Senate holds his position at the will of the Senate. I think the power to elect that officer is

alone vested in the Senate by the Constitution upon the happening of certain contingencies therein specified; that the exercise of such power exhausts it so long as the contingency remains upon which the power to act was given.

Mr. MERRIMON. I also desire to say that I dissent from so much of the report as asserts the power of the Senate to remove the President pro tempore at the will and pleasure of the Senate. At the proper time I shall ask the Senate to indulge me in submitting my views upon the subject. (Congressional Record, vol. 4, pt. 1, p. 273.)

Friday, January 7, 1876 (Journal, p. 84).

On motion by Mr. Sherman,

The Senate proceeded to consider the resolution submitted by Mr. Edmunds providing for an election this day of a President pro tempore, with the report of the Committee on Privileges and Elections thereon; and,

On motion by Mr. Edmunds,

Ordered, That the further consideration of the subject be postponed to Monday next. (See Congressional Record, vol. 4, pt. 1, p. 307.)

ELECTION OF PRESIDENT PRO TEMPORE.

The PRESIDENT pro tempore (having called for resolutions). The Chair understands there is nothing pending within the morning hour and no special order. What is the pleasure of the Senate?

Mr. SHERMAN. Mr. President, the Senator from Indiana [Mr. Morton] yesterday made a report from the Committee on Privileges and Elections in regard to a matter involving an officer of the Senate, or his right to be an officer of the Senate. It seems to me the Senate ought to take some action upon the proposition submitted by that committee; and, if it is now in order, I will move that the resolution offered during the last month by the Senator from Vermont [Mr. Edmunds] be now taken up with a view to offer a substitute.

The PRESIDENT pro tempore. The Senator from Ohio moves that the resolution which he has named be taken from the table for consideration.

Mr. EDMUNDS. I have not had time to examine the report.

Mr. SHERMAN. Until the Senator from Vermont can read the report more fully, I will offer, as a substitute for his pending resolution, the proposition reported by the Committee on Privileges and Elections.

Mr. EDMUNDS. I think that this had better go over probably until to-morrow, as the report has just been laid on our table. I dare say I shall agree to everything that the committee have reported, but I have not had an opportunity to read the report; and if it is agreeable to the Senator and the Senate, I should prefer to have it go over until Monday or to-morrow, if we sit to-morrow.

Mr. SHERMAN. I have no objection to that, but we seemed to have no business to-day, and I presumed this matter could be disposed of, as it certainly ought to be.

Mr. EDMUNDS. We have some executive business. I have not had time to look over this report.

Mr. SHERMAN. I have no objection to a postponement.

Mr. THURMAN. I hope this will go over until Monday, so as to give us an opportunity to examine the report.

Mr. EDMUNDS. There is no objection to that.

The PRESIDING OFFICER (Mr. Anthony in the chair). The Chair hears no objection, and the matter will lie over.

Monday, January 10, 1876 (Journal, pp. 90–91).

Mr. Morton, from the Committee on Privileges and Elections, reported the following resolutions, to accompany Report No. 3, submitted on the 6th instant:

(1) *Resolved*, That the tenure of a President pro tempore of the Senate, elected at one session, does not expire at the meeting of Congress after the first recess, the Vice President not having appeared to take the chair.

(2) *Resolved*, That the death of the Vice President does not have the effect to vacate the office of President pro tempore of the Senate.

(3) *Resolved*, That the office of President pro tempore of the Senate is held at the pleasure of the Senate.

(4) *Resolved*, That the Hon. Thomas W. Ferry, the Senator from Michigan, who was elected President pro tempore of the Senate at the last session, is now the President pro tempore by virtue of said election.

The Senate proceeded, by unanimous consent, to consider the said resolutions; and

After debate,

A division of the question having been called for by Mr. Merrimon,

On the question to agree to the first of said resolutions,

It was determined in the affirmative, {Nays 59; Yeas None}

On motion by Mr. Sherman,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Alcorn, Allison, Anthony, Bayard, Bogy, Booth, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Christiancy, Clayton, Cockrell, Conkling, Conover, Cooper, Cragin, Davis, Dawes, Dennis, Dorsey, Eaton, Edmunds, Frelinghuysen, Goldthwaite, Gordon, Hamilton, Hamlin, Harvey, Howe, Ingalls, Jones of Florida, Kelly, Kernan, Key, McCreery, McDonald, McMillan, Merrimon, Mitchell, Morrill of Vermont, Morton, Norward, Oglesby, Patterson, Randolph, Ransom, Sargent, Saulsbury, Sherman, Spencer, Stevenson, Thurman, Wadleigh, Wallace, West, Whyte, Withers, and Wright.

So the resolution was unanimously agreed to.

On the question to agree to the second resolution,

It was determined in the affirmative, {Yeas 62; Nays None}

On motion by Mr. Thurman,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Alcorn, Allison, Anthony, Bayard, Bogy, Booth, Boutwell, Bruce, Burnside, Cameron of Wisconsin, Caperton, Christiancy, Clayton, Cockrell, Conkling, Conover, Cooper, Cragin, Davis, Dawes, Dennis, Dorsey, Eaton, Edmunds, English, Frelinghuysen, Goldthwaite, Gordon, Hamilton, Hamlin, Harvey, Howe, Ingalls, Jones, Kelly, Kernan, Key, McCreery, McDonald, McMillan, Merrimon, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Norwood, Oglesby, Patterson, Randolph, Ransom, Sargent, Saulsbury, Sherman, Stevenson, Thurman, Wadleigh, Wallace, West, Whyte, Windom, Withers, and Wright.

So the second resolution was unanimously agreed to.

On the question to agree to the third resolution,

After debate,

On motion by Mr. Thurman to postpone the said resolution indefinitely,

Pending debate, * * * The Senate adjourned. (See Congressional Record, vol. 4, pt. 1, pp. 311, 312, 313, 314, 315, 316.)

OFFICE OF PRESIDENT PRO TEMPORE.

Mr. MORTON. Mr. President, it has been suggested to me by several Senators that the report of the Committee on Privileges and Elections in regard to the tenure of office of the President pro tempore of the Senate should properly have been accompanied by a resolution or resolutions embracing the conclusions of the committee. I now, therefore, offer the following resolutions:

"*Resolved*, That the tenure of office of the President pro tempore of the Senate elected at one session does not expire at the meeting of Congress after the first recess, the Vice President not having appeared to take the chair.

"*Resolved*, That the death of the Vice President does not have the effect to vacate the office of President pro tempore of the Senate.

"*Resolved*, That the office of President pro tempore of the Senate is held at the pleasure of the Senate.

"*Resolved*, That Hon. Thomas W. Ferry, a Senator from Michigan, who was elected President pro tempore of the Senate at the last session, is now the President pro tempore of the Senate by virtue of said election."

Mr. CONKLING. I inquire whether those resolutions are to be printed. Is that part of the Senator's motion?

Mr. MORTON. If the Senator desires their printing, I certainly have no objection.

Mr. CONKLING. I think they had better be printed if we are ever to act upon them.

The PRESIDING OFFICER (Mr. Allison in the chair). The resolutions of the Senator from Indiana will be printed and laid on the table.

Mr. MORTON. If it is desired by the Senator from New York or anybody else that they shall go over, very well; but I would prefer to have them disposed of.

Mr. EDMUNDS. We ought to have an executive session.

Mr. MERRIMON. I inquire whether it is in order to debate the resolutions offered by the Senator from Indiana. I dissented from one feature of the report made by the Committee on Privileges and Elections, and desire to have an opportunity to express the grounds of my dissent. I am prepared to do so now, unless it is very desirable to go into executive session. I shall detain the Senate but a few minutes.

Mr. EDMUNDS. I suggest to the Senator that it will be much more convenient probably to all of us, who would like to hear the Senator, that we hear his remarks when the matter comes up to-morrow or next day for action.

Mr. MERRIMON. Very well, sir; I am content to take that course.

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OFFICE OF PRESIDENT PRO TEMPORE.

Mr. MORTON. If no Senator desires to have the resolutions which I offered a few minutes ago go over until to-morrow, I will ask the Senate to proceed to the consideration of them now. If any Senator desires a postponement, of course they will go over under the rule.

Mr. MERRIMON. What resolutions are those?

Mr. MORTON. In regard to the President pro tempore.

Mr. MERRIMON. I am ready to go on.

The PRESIDENT pro tempore. The Senator from Indiana moves to take up the resolutions which he proposed this morning.

Mr. MORTON. They are before the Senate now.

Mr. THURMAN. Does a single objection carry the resolutions over to to morrow?

The PRESIDENT pro tempore. It does.

Mr. THURMAN. I think they had better go over till to-morrow.

The PRESIDENT pro tempore. The Senator from Ohio objects.

Mr. MORTON. Then let the resolutions be printed.

The PRESIDENT pro tempore. They have already been ordered to be printed.

Mr. SPENCER. I move that the Senate adjourn.

Mr. THURMAN. I made objection to the consideration of the resolutions of the Senator from Indiana, thinking they related to a wholly different subject from that which I am now informed they affect. The Senator from Indiana informs me now that the resolutions which he offered to take up were those in relation to the President pro tempore. I have no objection to the present consideration of that subject, and therefore I beg leave to withdraw my objection.

Mr. SPENCER. I withdraw the motion to adjourn. I thought there was no business.

The PRESIDENT pro tempore. There being no objection, the resolutions of the Senator from Indiana are before the Senate and will be read.

The Chief Clerk read the resolutions.

Mr. MERRIMON. Mr. President, I entertain the opinion that when the Senate elects a President pro tempore, the Senator so elected may rightfully continue to hold his office, unless his term as Senator shall sooner terminate or he shall be removed for cause, until the Vice President shall return to preside over the Senate, and in case he shall fail to so return because of death or other cause, then until a new Vice President shall be elected and qualified; and I ask the indulgence of the Senate while I state briefly the reasons that have brought me to this conclusion.

The Senate is a perpetual body; it is created, its powers are conferred, defined, and limited by the Constitution. The general laws of parliamentary bodies are applicable to it only so far as the same are not modified by and not inconsistent with the Constitution. It can not rightfully exercise powers not so conferred; it is not a body possessed of arbitrary powers; it must be governed in all things by the spirit of the Constitution. That it has the physical power to remove at will the President pro tempore I do not deny, because there is no tribunal to review its action, but whether it has the right without reasonable cause to make such removal may well be questioned; indeed, I can not suppose there could exist any disposition to exercise such arbitrary power. It therefore appears that the Senate is thus governed by the Constitution.

The Vice President is President of the Senate and he is beyond the control of that body, because the Constitution makes him so. It provides in terms no less definite and no less binding another officer to supply his place in his absence. The clause containing that provision is in these words:

"The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States."

This clause is mandatory; the Senate must choose its officers, other than its president, and a President pro tempore as well and as surely as any other, when the contingency requiring one shall arise. This officer is not at the option of the Senate; he is essential, as absolutely so as any other known to our system of government. If the Vice President shall be absent, the Senate can not proceed lawfully with business for one hour without this officer, and plainly because the Constitution commands that in that case such officer shall be elected. The Senate may determine what other officers it will have, but this officer it must have; he is designated. He may be not improperly styled an officer provided by the Constitution.

What, then, is the term of his office? The words "shall choose * * * also a President pro tempore" plainly and necessarily imply for during the time of the absence of the Vice President from the Senate for any cause. The term or phrase pro tempore has a very general meaning. It implies, generally, for the time, the occasion, the exigency; as if the president of the national convention of one of our political parties should be temporarily absent, in that case, by the general law of parliamentary bodies, a temporary presiding officer would be appointed or elected to supply his place during such absence. Such officer would be styled president or presiding officer pro tempore, and he would continue to preside until the return of the regular president, and an adjournment to a day certain would not displace him unless he should be removed. The time of the absence of the president in that case is the time, the occasion, the exigency to be supplied. This rule, as thus stated, applies to all deliberative bodies governed by general parliamentary law. But the special meaning of the term pro tempore must be ascertained by its use in a particular case, and so in the case now under consideration.

The Senate is required to have always a presiding officer, and the Constitution provides that "in the absence of the Vice President, or when he shall exercise the office of President of the United States," the Senate shall make one which is designated by name as President pro tempore; that is, for the time of such absence. To say that the power conferred to appoint pro tempore may be for one sitting of the Senate, for one hour, a day, a month, a session, or at the will of the Senate, does not meet the case provided for; the purpose is to supply a certain, fixed presiding officer for the time the regular officer shall be absent, whether that be long or short. He may be absent for a day, for a whole session, or for his whole term of office, and that absence is the measure of time to

be supplied by the President pro tempore. The term of such an officer could not be fixed by more definite terms; no other words could describe or fix his term more aptly; it is as certain as if it had provided for a year or four years, and nothing is left to discretion. If this view is not correct, then what is the true measure of time? And who shall determine it? If it is said the Senate, then whence the power? The power is expressly given to elect and the term is fixed as definitely as language can make it; no power is given to limit the term, either in words or by necessary implication. To say that the Senate can determine the term of office thus fixed by the Constitution, and that without cause, is shocking to the legal mind. If the office were one created by the Senate, then it may fix the term and determine it; but that is not the case; here the office is fixed, designated, and the term limited by the Constitution itself.

The President pro tempore is an officer in the sense of the Constitution; he is, in the Senate, in the place of the Vice President. He exercises the same power. He is clothed with important powers; grave duties devolve upon him, and he enjoys privileges which necessarily imply duration; he is amenable to the Senate for the just and proper exercise of these powers, and great responsibility attaches to him as such officer. The Constitution makes him an officer in the full sense of that term in point of time, power, opportunity, privilege, and, indeed, in every respect pertinent and lawful. He is not a mere occupant of the chair by the courtesy or will of the Senate; he is more than that; he presides not by courtesy, but by right; he exercises high powers, not by the toleration of a majority, but by the sanction of the Constitution; his official character is recognized by the other branch of Congress, by the executive and judicial departments of the Government, and his official acts are good to all intents and purposes whenever or wherever called in question.

The framers of the Constitution well understood that by the general parliamentary law the Senate could make a temporary presiding officer, who would be subject to its will and pleasure. Then the significant question presents itself, why the provision in question? Was it mere surplusage—only in affirmance of the general parliamentary law? By no rule of construction can it be so construed if it can have another reasonable meaning; indeed, a purpose and different meaning must be assigned, if this can reasonably be done. Can this be done? It is manifest that it can. The plain purpose was to provide a different officer from the one allowed by the general parliamentary law; one not at the will and pleasure of the Senate, but one like the Vice President, beyond its arbitrary control, one free and independent, one not subject to the whim of the hour, or the caprice and changing intrigues of political parties. The manifest object was to provide an officer as nearly independent as might be. The same conservative spirit that dictated the nature, character, form, and independence of the Senate suggested the wisdom of making the Presiding Officer of that body as free and independent as possible. It was deemed unwise to make an officer so dignified and important the mere tool of a party or a majority by making him subject to their will and pleasure. This view makes the provision of the Constitution in question operative, and answers a wholesome, indeed, a necessary, purpose, in view of the nature and purposes of the Senate. Any other makes it nonsensical and nugatory.

One or two supposed and not impossible cases will serve to illustrate how reasonable and very appropriate is such an officer in the view just submitted. Suppose the party majority here were two; that three of that majority should die; how would it comport with the dignity of this body, its character, its nature, and its purposes, and our system of government, for the minority, thus turned into a majority, at once and without cause to turn out the President pro tempore and put in one to suit their will and pleasure? Again, suppose in the faithful discharge of duty, the President pro tempore should feel constrained to make a ruling distasteful to the majority, how would it appear to see him turned out of office by the arbitrary will of a furious majority? A President pro tempore thus at the will and pleasure of a party or factious majority would have a high temptation to prostitute his office to base and ignoble purposes. The object was to place him above temptation by placing him above the general parliamentary rule, by making him an officer of the Constitution with a fixed term. The purpose of the Constitution is not to subserve the ends and purposes of parties and party intrigues or an occasion, but to secure wholesome government for the benefit of the whole people.

The objection to this view, that the Senate, like other parliamentary bodies, ought to have absolute control of its Presiding Officer, weighs little or nothing,

because the Constitution has placed the Vice President, the President of the Senate, beyond its control. In this there is a manifest purpose to depart from the general parliamentary law, and I have endeavored to show that this purpose was kept up and further secured by providing a Presiding Officer pro tempore. This provision is in aid of a fixed policy to place the Presiding Officer of this body beyond factious or partisan control. And this is both reasonable and wise.

It may be asked, What would be the condition of the Senate if both the President and the President pro tempore should be absent? I submit, in reply, that it was supposed by the framers of the Constitution that the provision made was sufficient for all practical purposes, and so a long experience has proved it to be. If such a case should arise, then the general law would necessarily apply and the Senate could appoint an occasional Presiding Officer, who would vacate the chair on the return of either of the regular ones.

One such case, and I believe only one, did happen. In that case, on the return of the President pro tempore the occasional officer vacated the chair and the Senate reelected the President pro tempore; but there was no necessity to do so. This must have been done out of abundant caution. The matter was not questioned or debated, and, like all such precedents, passes for very little.

Mr. Jefferson says in his Manual that—

"In the Senate, a President pro tempore in the absence of the Vice President is proposed and chosen by ballot. His office is understood"—

I emphasize that word—

"to be determined on the Vice President's appearing and taking the chair, or at the meeting of the Senate after the first recess."

It will be observed that this is only a note, and can scarcely be regarded as expressing his own opinion, for he says it is "understood," etc. It is known that he wrote his Manual between 1797 and 1800, and prior to that time in two instances the President pro tempore at the last session was present at the beginning of the next succeeding session, and in the then absence of the Vice President he did not take the chair, but a new President pro tempore was then elected. The note of Mr. Jefferson is, it seems, based upon these precedents. There were two similar cases, one in 1802 and one in 1803. These four cases are all of that kind. No question was made and there was no debate in any one of them; the action was taken without objection or examination, and it can not be claimed that they have much, if any, weight. The researches of our very able and excellent Chief Clerk, Mr. McDonald, show that from 1803 down to the present time the uniform practice has been that the President pro tempore continues in office at a succeeding session in the absence of the Vice President without reelection, and he cites 49 cases of this kind; and there are but 4 of the first kind, which happened at an early period in the Government and without question or consideration.

It is a fact worthy of note that in no case has the Senate ever exercised the power to remove the President pro tempore, and I venture with confidence to say that no authority for it can be cited outside of the general parliamentary law, and we have seen that this does not apply.

It is provided by section 9 of the act of March 1, 1792—

"That in case of removal, death, resignation, or inability both of the President and Vice President of the United States, the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives for the time being shall act as President of the United States until the disability be removed or a President shall be elected."

Here is a strong legislative declaration of opinion, at least, that the President pro tempore is not only an officer of the Government, but that he is an officer recognized and established by the Constitution, because the act was passed to carry into effect clause 5, of Article II, of that instrument, which provides:

"In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected."

That act has remained upon the statute book to this day without modification or alteration and has received at least the implied sanction during all that

time of the American people, Congress, and all political parties that have from time to time controlled the fortunes of the Government.

By the act of August 16, 1856, the President pro tempore, when there shall be no Vice President or when he shall act as President of the United States, shall receive the compensation provided by law for the Vice President, and thus is there a further legislative recognition of the permanency of this office.

Can it be that it ever was contemplated that such an officer should be at the will and pleasure of the Senate? Nay, at the beck and bidding of party intrigue and furious factions? The language, the spirit, the policy of the Constitution forbid it; the practice of the Senate and the legislation of Congress, so far as these bear on the subject, alike forbid it. Suppose the case, that pending the term of the President pro tempore the Vice President should die, what a shameful spectacle might be presented by party or faction trying to turn him out of office, to the end that some favorite of the majority or a faction in the Senate might become the President of the United States in case of the death of the President. If the incumbent should be a man of nerve, spirit, and great popularity, such an attempt might lead to disastrous public disturbance and revolution. It will be fortunate for the country if the law shall be so settled as to forbid and prevent such unhappy contingencies. There is no reason why it should not be so determined; there are the gravest reasons why it should be; and I have hastily glanced at some of them.

Then, by the terms and spirit of the Constitution, upon sound principle and wise policy, sanctioned more or less directly and indirectly by the practice of the Senate and Congress, the President pro tempore is an officer of the Constitution, having a fixed and continuous term, depending on the presence or absence of the Vice President, which the Senate has no power to determine except for lawful cause.

Mr. SAULSBURY. Mr. President, I do not propose to occupy more than a few moments of the time of the Senate, but I can not concur entirely with the views which have just been expressed by the Senator from North Carolina, and I desire to say in the commencement of the remarks which I have to make that I regard this not as a question appertaining at all to the present incumbent of the chair, but as a question purely of a legal character, involving the rights and powers of this body. It rises above any considerations of a private character, because it affects the dignity and powers of the Senate itself. If it were a question involving any personal rights, I should take it on myself to say that so far as I have observed the action of the present incumbent of the office no man could have discharged the duties more satisfactorily to the body; no one could have acted with greater courtesy and urbanity to all; and he has displayed an impartiality and ability that entitle him to the regard and consideration of every Member of the Senate.

But, sir, it is not a question affecting private rights, but a question involving, as I before said, the rights of the Senate—the right of this body to change at its pleasure the Presiding Officer of the body.

The only provision in the Constitution which refers to it is found in the fifth clause of the third section of the first article, which was quoted by the Senator from North Carolina. The Senator infers, from the fact that there is a specific authority given to elect a President pro tempore, that the Speaker pro tempore is named, that it was intended thereby that he was to be distinguished from other officers in respect to the tenure of his office and the power and authority of the Senate over such officer. I dissent from that view. The reason why he is specifically named in that clause is very apparent from the face of the clause of the Constitution referred to.

The Constitution had provided in the preceding clause for the Senate a presiding officer, the Vice President of the United States; and unless there had been a special provision of the Constitution as to who should preside over this body in the absence of the Vice President there would have been no authority whatever in the Senate of the United States to choose its Presiding Officer. I hold that but for the provision here inserted in the Constitution the death or absence of the Vice President would have left this body entirely without a presiding officer, and incapable from any inherent power in the Senate as a deliberative body to provide one. It would have been in the precise condition that the House of Commons in England is, which to-day can not elect a speaker pro tempore except by the consent and approval of the Crown. And so, but for this special provision authorizing the Senate of the United States to pro-

vide a President pro tempore in case of the death or absence of the Vice President, this body would have had no power to select its own Presiding Officer; and hence it is that that clause is specifically inserted delegating authority to the Senate in case of the absence or death of the Vice President, or when he shall exercise the office of President of the United States, to provide a Presiding Officer. For this reason he is specifically named in the Constitution, while the "other officers" are not named.

Now, I differ from the conclusions of the honorable Senator as to the results which would follow provided the Senate had not the power to choose. I can not concur in the view entertained by some, that when we have once elected a President pro tempore we have exhausted the power which is conferred by the provisions of the Constitution authorizing the selection of a President pro tempore. If that view is correct, what is the consequence? Then, if your President pro tempore should die, you have no inherent power to select a successor to him, and you have no authority in the Constitution, and you see at once that the consequence would be that the business of the Senate must stop. Or, to trace that doctrine out to its logical consequences: Suppose you elect a President pro tempore and he fails to discharge the functions of his office—it is not probable that he would do so, but it is within the possibilities—suppose he should refuse to receive any communication from the House of Representatives; suppose he should refuse to receive any message from the President of the United States; suppose he should refuse to sign the bills that were passed by Congress, you have no power of removal by electing another President pro tempore to supersede him, because according to this doctrine, having executed the power granted, the power is exhausted and you can go no further.

Mr. MERRIMON. I beg to interrupt my friend. He misapprehends my position entirely. I said that the Senate had power to remove him for cause—lawful cause. The case put would be a case where there would be cause. I maintain that his office as Senator while he is a Member of the Senate remains intact, and for any act that he might commit he might be dealt with as a Senator though he be the presiding officer.

Mr. SAULSBURY. My answer to that is that, so far as I read the Constitution, it was not absolutely necessary that the Senate should have chosen a President from its own body. There may be a provision of law to that effect somewhere, but the Constitution is silent as to who may be chosen. It distinctly says that the Senate may choose a President pro tempore; but it does not say that it shall select him out of its own body. Suppose the President pro tempore should not be also a Senator, how then would you reach him for failure to perform the duties of his office? But suppose it to be true that there is a provision which requires that the President pro tempore shall be selected from among the Senators; suppose that the Senator presiding as President pro tempore should discharge every duty incumbent on him as a Senator; suppose he votes and discharges his duties as Senator, but fails to discharge his duties as President pro tempore, how would you reach him? The only manner in which you could affect him, according to the doctrine that I think is here contended for, is by his removal from this body as a Senator, by expelling him and in that way reaching him as President pro tempore.

Well, sir, if he has discharged his duties faithfully as a Senator, conducted himself with perfect propriety, performed the duties and functions pertaining to his office as Senator, I see not how you are to reach him, because it is not to be presumed that the Senate would act unjustly, and for the purpose of removing a President pro tempore, whose office is entirely distinct and separate from his office as Senator. It is not to be supposed that in order to reach him in that capacity you would be unjust and turn him out of the Senate if he had discharged his duties as a Senator; for let it be observed that the function of his office as President pro tempore is not a function pertaining to his office as a Senator of the State he represents.

Mr. MERRIMON. I will interrupt my friend a moment to explain further my dissent from that view, and will do it in aid of the view I submitted a while ago. I insist that a part of the duty of a Senator under the Constitution is that if he shall be designated by the Senate to preside as President pro tempore he shall so act; it is one of the duties that devolve upon him as a Senator, and therefore if any Senator on this floor were designated to-day to preside in the chair and should obstinately refuse to do it, that would be ground for dealing with him as a Senator. The Constitution devolves the obligation on

him to discharge that duty as much as any other, if the Senate shall assign it to him.

Mr. SAULSBURY. I differ entirely from the view of the Senator from North Carolina. I was proceding to say that you have no power, according to the argument of the Senator, traced to its logical results, to reach him for any cause whatever; for, according to his argument, the Senate having exercised the grant of power contained in the Constitution to choose a President pro tempore, your power becomes exhausted, and you can not again exercise that power in any respect.

But let us trace this still further in its consequences. He is an officer of the Senate. He is not a civil officer; and for the proper discharge of his duties, you can not reach him except as an officer of the Senate. You can not reach him by impeachment. The House of Representatives has no right to prefer articles of impeachment against a Senator, and you can not try him, therefore, upon any articles of impeachment. He is, therefore, not a civil officer of the Government in the ordinary and usual acceptation of that term, but his office is one purely as an officer of the Senate, elected by its votes, exercising his functions alone for the orderly transaction of the business of the Senate, responsible to the Senate, removable at the will and pleasure of the Senate. Being an officer of the Senate alone, his relation to the Senate differs from that of the other officers of this body only in its greater dignity and the nature of the duties it enjoins.

Now, sir, in submitting these remarks, which have been very hastily thrown out, and I am sure are very crude, I only want to maintain and uphold the authority of the body, so that, when it shall have either an inefficient officer or one who fails to discharge properly the function of his office in the chair, the power may be asserted in this body to provide another officer who will discharge his duties; and I am sure that no one who knows me will attribute any remarks which I utter as being intended to apply to the present very efficient and very able Presiding Officer of this body. My sole purpose is to maintain what I conceive to be indispensably and absolutely necessary; the right of this body to change its officers whenever in its pleasure it becomes proper to do so.

These are all the remarks which I propose at the present time to submit on this question.

Mr. JONES of Florida. Mr. President, I agree in all that has been said by the committee in the report except what is stated in their last conclusion, and I concur entirely with the Senator from North Carolina [Mr. Merrimon] in the views he expressed in regard to this case.

Whatever might have been the construction of the Constitution before the act of March 1, 1792, was passed, it is very clear that that act must have great weight in the consideration of the question before us. It is not enough to show, therefore, by the terms of the Constitution, that the President pro tempore of the Senate is an officer of the Senate, and under those provisions alone would be removable at the pleasure of the Senate. It is possible that such a construction would have been warranted before the act of 1792 was passed; but the Constitution gave to Congress the right to say, and that body has said, what officers shall succeed to the office of President in the event of the death of the President and Vice President. While it may be true, therefore, that the Constitution intended to place the President of the Senate under the control of this body and make him removable at its pleasure, if no legislation was had under the first section of the second article of the Constitution, which empowers Congress to provide for filling the office of President when the first two officers in the Government are dead or are removed, still, the last provision in the Constitution gives Congress the power to change the tenure of the office of the President of the Senate when it gives it authority to say that the person who fills it in a certain exigency shall be President of the United States.

If the power conferred upon Congress touching the filling of the office of President of the United States be in conflict with that which is supposed to exist on the part of this body to remove its Presiding Officer, then reasonable construction must decide the question at issue. It is not enough to say that the President pro tempore of the Senate, like the Sergeant at Arms of the Senate, is an officer of this body, and because the Sergeant at Arms may be removed by the Senate, so may the President pro tempore be removed. This mode of reasoning would be admissible if Congress under the Constitution had

not pointed out duties beyond the Senate for the one officer in a certain contingency which it has not prescribed for the other.

This is the great point, in my opinion, upon which this debate must turn.

If Congress has the right (which no one will deny) to cast upon the President pro tempore of the Senate the office of the President of the United States when the President and Vice President are dead, and in order to guard against doubts and uncertainties in a matter of so much importance, it becomes necessary that the tenure of office of the President of the Senate should be fixed, can it be said that the right to remove such officer on the part of the Senate should supersede the right of Congress to designate him as heir expectant of the presidency? Or, to put the proposition in another shape, if Congress under an express provision of the Constitution has the right to cast upon the President of the Senate duties and powers, either in presenti or in expectancy, which are in conflict, or which may come in conflict, with the right of the Senate to remove such officer, derived by implication, which power shall prevail? The right of this body to remove this officer is a right derived by implication, while the other right exercised by Congress is in virtue of an express power given by the Constitution. The Constitution made it the duty of Congress to declare by law what officer shall exercise the Executive office of the Nation when left vacant by both the President and Vice President. Congress accordingly has provided that in such a contingency the office shall be filled by the President of the Senate or the Speaker of the House for the time being. Congress was not invested with the general power to fill the office; but the Constitution requires that it shall provide by law what officer shall act as President in such an exigency. Law, as defined by a great master of jurisprudence, is a rule of action, prescribed by the supreme power of the State, commanding what is right and forbidding what is wrong. It is distinguishable from a sudden and transient order proceeding from the whims and caprices of despots. It implies permanency and uniformity, and is prescribed or published in order that all may know the duties it enjoins and the penalties which its violation will incur.

The law then designates the President pro tempore of the Senate as the officer who shall succeed to the Presidency in the contingency mentioned. How will this law operate with the right asserted in behalf of this body to remove that officer at its pleasure? Remember that the law provides that if there is no President pro tempore of the Senate the Speaker of the House shall act as President. All experience teaches us that nothing is more dangerous to the peace and security of nations than those conflicts which arise out of disputes about the right to the chief office in the State.

Nothing can be more important to the safety of the Republic and liberties of the people than the removal of all doubt, or the means of creating doubt, as to the persons entitled to the office of President of the United States. Persons with doubtful titles may, and often do, go into the the local subordinate offices; but let any man enter the office of President of the United States whom a majority of the people of this country believe is not entitled to it, and they would be tempted to remove him by force. There was a time in the history of the country when it was not considered sound to reason from the existence of a power to the abuse of it. We have all seen enough in our day and time to convince us that the only real danger to which this grand fabric of government is exposed is the excitement, passions, and conflicts resulting from party spirit.

I am not unaware that as a Member of the minority of this body, entertaining hopes that a change will take place in the political complection of the majority, my interest and the interests of those with whom I act here lies in a different direction from the one in which my argument leads me; but, sir, while feeling, as all do, the influence of party attachment and principles, I think, sir, I feel more strongly at this time the necessity of using the little power at my command in strengthening every rampart which the Constitution has erected for the protection and security of our liberties. This body we know is subject to change. It has changed in the past and it will change in the future. It has never yet happened, I believe, that a President of this body was called to the office of President; but it may happen at any time. True wisdom requires that we should always be prepared for what is possible to occur.

We know that occasions may arise when this body and the other House will feel the force of excitement sure to result from a vacancy in the Executive office. We are without a Vice President to-day. There is but one step from the chair of the Senate to that of the Nation. Who can tell what a day may

bring forth? There is no greater security for the life of a prince than exists for the life of a beggar.

"Within the hollow crown,
That rounds the mortal temples of a king,
Keeps death his court; and there the antic sits,
Scoffing his state, and grinning at his pomp;
Allowing him a breath, a little scene
To monarchize, be fear'd, and kill with looks;
Infusing him with self and vain conceit,—
As if this flesh, which walls about our life,
Were brass impregnable; and humor'd thus,
Comes at the last, and with a little pin
Bores through his castle wall, and—farewell king!"

With the absolute power of removal over the officer who is designated by law to fill the office of President, if the occasion should arise, which I pray it may not, for putting in practice this part of our Constitution, to what intrigue and political excitement would not this power lead in the Senate when it was within its competency to designate the man who should occupy the first place in the Nation. The power given in the Constitution to the Senate to choose its own President would in that event be converted into a power to elect a President of the United States. But, sir, this is the body which has the power to remove from office by impeachment. A large partisan majority here and in the other House may remove both the President and Vice President, and they may be prompted to do this by the hope of getting some favorite into the presidential office. Mark you that in case of the removal of both the President and Vice President the Senate, under the rule insisted upon on the other side, would elect the President. Is it wise to give to that tribunal which alone has the power under the Constitution of removing the President and Vice President absolute power to name their successors? Need it be said, sir, that little checks like the one we advocate in this case might prove sufficient to save the State? This very power of the Senate to elect or remove a President at pleasure might lead to combinations and conspiracies to promote the fortunes of particular men. I do not argue now from the virtues or vices of any party, but I argue from the known passions, weaknesses, and imperfections of human nature itself. True, there are some powers I would not give to any party, and all that I say on this subject I intend to apply to all political organizations.

Why is it that the question now under debate has been brought before us? No complaint has ever been made against the gentleman in the chair on account of the manner in which he has performed his duties. No one supposes that this subject would now be agitated had we not lost the Vice President. And what does this show? It shows that the Senate is looking beyond the office of President of the Senate, and, recognizing the uncertainties of life, is anxious about the person who might be called to the first office in the Government. And this, in my opinion, is not what the Constitution intended. It did not mean that the Senate should say who should be President in the exigency stated. If it did, very strange language has been employed to convey this meaning. But the Constitution gave Congress the power to decide this question, and that body has designated the officer. According to our view the President of the Senate, selected without reference to any higher duties than belong to that office, would in the emergency mentioned succeed to the Presidency. In the other case the Senate would have the power while complying with the letter of the law, and furnishing an officer for the vacancy filling the description in the statute, to exercise in its choice as to the person who should be placed at the head of the Government. Let the present situation illustrate the question. The present Presiding Officer was elected at a time when no thought was entertained of the death of the Vice President. He was liable to be superseded at any moment by the latter officer. If during the absence of the Vice President he and the President died, were removed, or resigned, Mr. Ferry would have become President. In that case there would have been no opportunity for the Senate to engage in a contest about the succession under one view of the law. But how would the case stand under the other view? Should sickness or accident imperil the life of the Chief Magistrate, then the Senate would have the power to exercise a choice as to the person who might be called to the Presidency. The selection of a President pro tempore of the Senate under such circumstances would become a selection of a President

of the United States. And will any man say, or can he say, that with such a momentous issue cast upon this body there would not be much of the feeling, the acrimony, passion, and excitement, and with them much of the danger attending an ordinary election for that high officer?

But, sir, this is not all. As I said a while ago, the Constitution provides that if there be no President pro tempore of the Senate the Speaker of the House, in the emergency stated, shall act as President. Remember now that while this body may bind its own Members by its decision respecting the capacities and powers of its own Presiding Officer, so far as these relate to his ordinary duties in this body, it can not claim the right to bind, and it can not bind, by any decision it may make, the other House of Congress in regard to this right of removal, in so far as that right involves the question of title to the Presidency. The House of Representatives being equally interested in this question with the Senate, has a right to decide for itself. And while this body may confirm this report and affirm that the Speaker of the House is removable at the will and pleasure of that body, and that therefore the President of the Senate is removable at the pleasure of this. And I would say here, by way of parenthesis, that the conclusion arrived at is because the Speaker of the House is removable at the will and pleasure of that body the President pro tempore is likewise removable by this.

Mr. MERRIMON. What authority is there for saying that the Speaker of the House may be removed at the will of the House?

Mr. JONES of Florida. None. The people's Representatives may possibly come to a different conclusion, and they may say, as they have the right to say, that their Speaker holds his office for two years and is not removable at pleasure, and that the Presiding Officer of this body holds his office by like tenure. It is hardly necessary for me to say what conclusion this reasoning will justify. If the Senate should act upon the theory of this report and displace their President when in the judgment of the House they had no right to do so, and a vacancy occurred in the office of President, the House might be found claiming the office of President of the United States for their Speaker and the Senate for their President. This condition of things could never result from the law as we understand it; for, although the House might believe in the power of removal as set up in this report and the Senate in a fixed tenure of office, no harm could come from such a difference. This is all I have to say on that part of the case.

I contend that by the very words of the Constitution the power of removal does not exist. The Constitution gives to the Senate the right to elect a President pro tempore in the absence of the Vice President. Upon the appearance of the later officer the right of the former to the chair terminates. The language is:

"The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States."

The language in regard to the Speakership is:

"The House of Representatives shall choose their Speaker and other officers."

No one who has studied the Constitution can fail to detect the pointed difference in the language employed in the two cases. The Senate is not to choose their President pro tempore and other officers, but their own officers and a President pro tempore.

It is not denied in the report of the committee that the Vice President, when presiding over the Senate, holds his position independent of our pleasure. He is not liable to be displaced at the will of a majority. He is entitled to preside as long as he holds his office. And who can say that the framers of the Constitution, in providing for a permanent Presiding Officer of this body, did not consider it important that he should be clothed with independence in that important station? Every parliamentary body is composed of partisans, and these are divided into a majority and minority numbers. The rules or constitution of all such bodies are intended in a great measure to protect the rights of the minority. The majority can always protect itself. Nothing is more important to the fair and just application or enforcement of these rules than a Presiding Officer who can hold with an even hand the scales of justice between the majority and the minority. He is to some extent a judge. He is expected to decide many questions affecting the parties in the house and all agree that he ought to decide fairly. How is this object to be obtained? or is it so unimportant that no provision should be made to secure it? If it is an end worthy of attention, can anything be more plain than that the com-

plete independence of the Presiding Officer, if not absolutely essential, will contribute very greatly in securing fairness and impartiality in the discharge of his duties? This is the more important in the Senate because of the long tenure of our offices. Under our system the great corrective power is with the people, and in the other House if any man abuses his power he may be brought to account before his constituents in two years. But here it is necessary to have some safeguards for the rights of the minority outside of the people. In the case of the President of the Senate it is to be found in the independence with which he is clothed. If it is wise and proper that the permanent Presiding Officer of this body should be independent, is it not equally so that the President pro tempore should be? It is possible that an officer of the latter character might preside over this body for four years. A President pro tempore must preside when the Vice President acts as President, and this has already occurred more than once in our history, and for nearly the whole term of the office.

Mr. President, it is well known that there was but one parliamentary body in the world at the time of the adoption of our Constitution whose history was looked to as an example by the men who devised the organization of this and the other House of Congress. That was the English House of Commons. Upon this subject none of the ancient republics afforded any light. They were governed by no fixed laws; indeed they were rude democracies, where violence and tumult often reigned supreme. The English Commons was at that time a model parliamentary body. Some of the most extraordinary statesmen and orators of the world had, before the time I speak of, rendered it famous by the display of their genius and eloquence. Besides, it was the body in which the great questions that drove the American Colonies into revolution were discussed, and it attracted for many years the most intense interest on this continent. Throughout the Federalist it is constantly referred to, which shows that it had been well studied by the leading men of the Revolutionary era. All the colonial legislatures were formed after this great model, and it can hardly be doubted that when this body and the other House were created it was expected that the powers and duties of the officers who should fill the respective offices would be similar to those of the officers of the English House. That body always had a speaker and a sergeant at arms. The speaker was always elected from among the returned members. Our Constitution, in providing for the election of a Speaker, did not deem it necessary to say that he should be selected from among the Members of the House. The English practice, like the great source of light in judicial difficulties, the common law, settled the question. Now what was the law governing the subject under debate in the English House of Commons at the time of the adoption of our Constitution? The report of the committee says that the Speaker of the other House holds his office at the pleasure of that body; and the same rule must prevail here in regard to the President pro tempore. The Constitution is silent upon the subject, and the reason and authority are all that we have to guide us. The law in force in the House of Commons then and now is that the speaker shall hold his office during the whole Parliament, unless by resignation or death or a vacancy arises.

One more point and I will conclude. The Constitution gives to the Senate the right to chose a President pro tempore in the absence of the Vice President. This is an express power, limited to a particular case. From whence does the power of removal come? It is not written in the Constitution. Where does the Senate obtain the right to exercise an implied power, for such the power of removal is in this case? Are there any implied powers vested by the Constitution in Congress? Yes. But in whom or what department? The Constitution declares that—

"The Congress shall have power to make all the laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

Congress, and Congress alone, is the authority which the Constitution has invested with the right to carry into execution all implied powers. And if Congress should say that the Senate might remove its President it would bind the other House, and thus avoid the difficulties pointed out in the forepart of my argument.

With these observations, Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. Cragin in the chair). The question is on the passage of the resolutions.

Mr. MERRIMON. I move to amend by striking out the third and fourth resolutions.

Mr. EDMUNDS. I suggest to the Senator from North Carolina, as these are separate resolutions and may be voted upon separately, that it is much more convenient to take the question as each resolution comes up.

Mr. MERRIMON. On that suggestion I withdraw my motion, and ask for a division of the question upon the resolutions.

The PRESIDING OFFICER. A division is called for. The question is on the first resolution; which will be reported.

The Chief Clerk read as follows:

"*Resolved*, That the tenure of a President pro tempore of the Senate elected at one session does not expire at the meeting of Congress after the first recess, the Vice President not having appeared to take the chair."

The resolution was agreed to.

Mr. SHERMAN. I want to emphasize the matter. This resolution is adopted unanimously. It is a resolution that affects the organization of the body for all time to come and establishes a precedent. I intended to call for the yeas and nays, but I will not do so as the resolution has passed unanimously.

The PRESIDING OFFICER (Mr. Cragin in the chair). As far as the Chair could distinguish, it was passed unanimously. The second resolution will be read.

The Chief Clerk read as follows:

"*Resolved*, That the death of the Vice President does not have the effect to vacate the office of President pro tempore of the Senate."

Mr. SHERMAN. Merely to have the precedent settled, I venture to call for the yeas and nays.

Mr. THURMAN. By unanimous consent we can have the yeas and nays on the first as well as the the second resolution.

Mr. SHERMAN. I speak of the first.

Mr. THURMAN. We have got to the second, but we could go back to the first by unanimous consent and take the yeas and nays on that, and then on the second.

The PRESIDING OFFICER. If there be no objection, the yeas and nays will be taken on the first resolution. The Chair hears no objection.

Mr. WHYTE. Let the first resolution be read.

The PRESIDING OFFICER. It will be again read.

The Chief Clerk read as follows:

"*Resolved*, That the tenure of a President pro tempore of the Senate elected at one session does not expire at the meeting of Congress after the first recess, the Vice President not having appeared to take the chair."

The question being taken by yeas and nays, resulted—yeas 59, nays none.

So the resolution was adopted unanimously.

The PRESIDING OFFICER. The next question is on the second resolution; which will be read.

The Chief Clerk read as follows:

"*Resolved*, That the death of the Vice President does not have the effect to vacate the office of President pro tempore of the Senate."

Mr. THURMAN. I ask for the yeas and nays for the same reason they were had on the other resolution.

The yeas and nays were ordered; and being taken, resulted—yeas 62, nays none.

So the resolution was adopted unanimously.

Mr. ENGLISH. I was not in my seat when my name was called on the first resolution. I ask leave to vote.

Mr. EDMUNDS. That is against the rule.

The PRESIDING OFFICER. After the result has been declared the rule does not allow a name to be recorded. The question is now on the third resolution.

Mr. THURMAN. I wish to say a very few words on this resolution; but first let it be reported.

The PRESIDING OFFICER. The third resolution will be read.

The Chief Clerk read as follows:

"*Resolved*, That the office of President pro tempore of the Senate is held at the pleasure of the Senate."

Mr. THURMAN. The solution of this question is perhaps somewhat difficult, although it is within a narrow compass; and it depends, I imagine, upon the inquiry whether the words "pro tempore," in the clause of the Constitution

that has been read, are used in that instrument in a technical parliamentary sense or whether their meaning is fixed by the context of the clause in which they occur. If they are used in a technical parliamentary sense, then it seems to be admitted on all hands that the President pro tempore is subject to removal like the Speaker pro tempore of the House, in case there should be such an officer there, or any other pro tempore official. In other words, according to the technical parliamentary sense of the words "pro tempore" in relation to the tenure of an officer, they mean the same as "durante bene placito"—during our good pleasure.

But it is said and argued with great force by the Senator from North Carolina [Mr. Merrimon] and the Senator from Florida [Mr. Jones] that these words are not used in a mere technical parliamentary sense, but that their meaning is fixed by the context of the clause in which they occur; and that is, "The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States." It is argued with force that it is not said that the Senate shall choose a President pro tempore, to hold his office during the good pleasure of the Senate; that there is no such limitation as that "during the pleasure of the Senate"; and it is said further that the "tempus" that is contemplated here is the absence of the Vice President, or his discharge of the duties of President, which necessitates his absence, or is another case of absence; and it must be admitted that, looking at the clause, giving it a natural construction, there is great force in that argument. They shall choose also a President pro tempore in the absence of the Vice President or when he shall exercise the office of President of the United States. Whenever the Vice President shall exercise the office of the President of the United States the Senate shall choose "a President pro tempore," not a President to-day and another to-morrow and another the day after, to hold merely during the pleasure of the Senate, but a President pro tempore for that occasion, for that time. There certainly is very great force in this view of the Constitution, and there is also very great force in the reasons that have been suggested of a more enlarged and general nature. Nevertheless, Mr. President, I can not say that I am perfectly clear in my own mind which construction ought to prevail; and inasmuch as the question as now before us is a mere abstract question; as it is not necessary for us to determine it at all, and it can not become necessary for us to determine it after the passage of the first and second resolutions unless somebody shall move to proceed to the election of a President pro tempore, and thus to displace the present incumbent; as we have unanimously voted that he is rightfully President pro tempore now and nobody has yet moved to displace him by proceeding to another election, it is very obvious that any decision we might make upon this third resolution at this time would be what lawyers call obiter dictum. I therefore, in order that the matter may undergo further reflection and consideration before we decide upon it, move to lay the third resolution on the table.

Mr. MORTON. And cut off debate?

Mr. THURMAN. If anybody wishes to debate, I will not do it.

Mr. CONKLING. Move to postpone it indefinitely.

Mr. THURMAN. Well, I move to postpone the third resolution; but perhaps a motion to postpone indefinitely looks like deciding against it.

Mr. CONKLING. Not more than laying it on the table.

Mr. THURMAN. If it is laid on the table, it can be taken up again. But, however, wishing it understood that I do not consider that a vote to postpone it indefinitely is necessarily a vote against the resolution of the committee, as we may postpone it indefinitely for the reason which I have given, that there is no case now before the Senate requiring our action upon this resolution because there is no motion made to proceed to the election of a President pro tempore, I move that the resolution be postponed indefinitely.

The PRESIDING OFFICER. The Senator from Ohio moves to postpone the resolution now under consideration indefinitely.

Mr. EDMUNDS. Mr. President, the Senator from Ohio has so much surprised me by his expression of a doubt upon this subject that in order that I may reflect upon the matter I move that the Senate adjourn.

The motion was agreed to; and (at 2 o'clock and 42 minutes p. m.) the Senate adjourned.

Wednesday, January 12, 1876 (Journal, pp. 99–100).

The Senate resumed the consideration of the resolutions reported by Mr. Morton from the Committee on Privileges and Elections, relative to the tenure of office of the President pro tempore of the Senate; and

The question being on the motion of Mr. Thurman to postpone indefinitely the further consideration of the third resolution,

After debate,

It was determined in the negative, {Yeas 18 / Nays 36}

On motion by Mr. Morton,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bogy, Caperton, Cockrell, Cooper, Davis, Eaton, Goldthwaite, Harvey, Johnston, Kelly, Kernan, McCreery, Merrimon, Randolph, Stevenson, Thurman, Wallace, and Whyte.

Those who voted in the negative are,

Messrs. Alcorn, Allison, Anthony, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Cragin, Dawes, Edmunds, Frelinghuysen, Hamilton, Hamlin, Ingalls, Key, McDonald, McMillan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Paddock, Patterson, Sargent, Saulsbury, Spencer, Wadleigh, West, Windom, Withers, and Wright.

So the motion was not agreed to.

The question recurring on agreeing to the third resolution, as follows:

Resolved, That the office of President pro tempore of the Senate is held at the pleasure of the Senate.

On motion by Mr. Whyte to amend the resolution by adding thereto the following: "Until the happening of the contingency provided for in the ninth section of the act of Congress, approved March 1, 1792, when he is authorized to act as President of the United States."

After debate,

It was determined in the negative, {Yeas 18 / Nays 33}

On motion by Mr. Whyte,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are:

Messrs. Bogy, Coperton, Cockrell, Cooper, Davis, Eaton, Goldthwaite, Hitchcock, Johnston, Kernan, McCreery, Merrimon, Randolph, Saulsbury, Stevenson, Wallace, Whyte, and Withers.

Those who voted in the negative are:

Messrs. Alcorn, Allison, Anthony, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Conover, Cragin, Dawes, Edmunds, Frelinghuysen, Hamilton, Hamlin, Ingalls, Key, McDonald, McMillan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Paddock, Patterson, Sargent, Wadleigh, West, and Wright.

So the amendment was not agreed to.

On the question to agree to the resolution,

It was determined in the affirmative, {Yeas 34 / Nays 15}

On motion by Mr. Edmunds,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are:

Messrs. Alcorn, Allison, Anthony, Booth, Boutwell, Bruce, Cameron of Wisconsin, Christiancy, Clayton, Conkling, Cragin, Dawes, Edmunds, Frelinghuysen, Hamilton, Hamlin, Ingalls, Kernan, Key, McDonald, McMillan, Mitchell, Morrill of Maine, Morton, Oglesby, Paddock, Patterson, Sargent, Saulsbury, Spencer, Wadleigh, West, Windom, and Wright.

Those who voted in the negative are:

Messrs. Bogy, Coperton, Cooper, Davis, Eaton, Goldthwaite, Johnston, McCreery, Merrimon, Randolph, Stevenson, Thurman, Wallace, Whyte, and Withers.

So it was

Resolved, That the office of President pro tempore of the Senate is held at the pleasure of the Senate.

On the question to agree to the fourth resolution, as follows:

Resolved, That the Hon. Thomas W. Ferry, Senator from Michigan, who was elected President pro tempore of the Senate at the last session, is now the President pro tempore by virtue of said election.

Mr. Morton, with the consent of the Senate, withdrew the said resolution (see Congressional Record, vol. 4, pt. 1, pp. 360–373 as follows):

OFFICE OF PRESIDENT PRO TEMPORE.

The PRESIDENT pro tempore. If there be no further resolutions the morning hour has expired, and the Chair will lay before the Senate the unfinished business, being the resolutions of the Senator from Indiana [Mr. Morton] in regard to the tenure of offce of the President pro tempore of the Senate. The question is on the motion of the Senator from Ohio [Mr. Thurman] to postpone indefinitely the third resolution.

Mr. EDMUNDS. Let it be read.

The Chief Clerk read as follows:

"3. *Resolved*, That the office of President pro tempore of the Senate is held at the pleasure of the Senate."

Mr. EDMUNDS. Mr. President, I am so much surprised at the doubt my friend from Ohio [Mr. Thurman] expressed about this thing that I think it necessary for me to say a few words upon the subject for my own satisfaction, if not for that of anybody else.

The power of the Senate to elect a President pro tempore is one which is named in the Constitution. It is there provided—

"The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

"The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States."

I think it obvious, from the well-known course of law existing at the time the Constitution was formed, that this clause empowering the Senate to choose a President pro tempore was inserted merely to rebut an implication that would arise from the statement that the Vice President shall be President of the Senate. If that clause had not been put into the Constitution there would have been no need to insert the other, that the Senate should have power to choose a President pro tempore, any more than there would have been to insert in the powers of the House of Representatives a power on the part of that body to choose a

Speaker pro tempore; and no such clause is introduced into it because, as I say, it was well known, from the constitution of all parliamentary or other deliberative bodies, that it is one of their inherent powers, in order that they may act at all, in order that they may exist in any active sense, that they shall select some person to preside over their deliberations.

Therefore it appears to me plain, in the first place, that this clause touching the power of the Senate to elect a President pro tempore was merely put in to exclude the presumption which might otherwise have arisen from the preceding clause which states that the Vice President of the United States shall be the President of the Senate—to exclude the presumption that that was an exclusion of the power of the Senate to have a President pro tempore in his absence, and the Senate in that case, of course, would be obliged to wait until he should come, just as for a long time in England the House of Commons were totally unable to do any business at all, according to their precedents and usages, when the speaker was absent or sick or unable to take the chair; for they had no power, as they then understood, growing up as they did, to select anybody to act as speaker pro tempore. They got over that delusion, however, I will add, a good while ago; but that used to be the first impression.

Inasmuch as this first clause would be a direct declaration that the Vice President of the United States, and he alone in a legal sense, should be the President of the Senate, in order to guard against any question that might arise as to the ordinary power of the Senate to exercise what would otherwise be one of its inherent functions, this additional clause was inserted, that in the absence of the Vice President, or while he exercised the duties of President of the United States, the Senate should choose a President pro tempore.

Then the question is what is a President pro tempore? The Constitution does not say "they shall choose a President to fill the vacancy caused in the presidency of the Senate when the Vice President exercises the office of President of the United States," which is for a fixed period, when the President dies, during the whole period of his unexpired term. So I conclude that if the Constitution makers had intended that the President pro tempore of the Senate, in spite of the very meaning of those words, should be an officer who had a title to an office which was continuous, determined either by the efflux of time or by some external contingency, they would have said so and would have declared, when they were regulating the office of the President pro tempore of the Senate, that this officer should hold his office until the Vice President should again take the chair or until the expiration of the term of the Vice President who had been transferred to the performance of the duties of President of the United States. That would have most naturally occurred to everybody who had intended that the Presiding Officer of the Senate should be an officer irremovable at the pleasure of the Senate, as upon all principles it is agreed that but for this clause he would have been. I think that was admitted in the debates by gentlemen on the other side. It would have been easy for them to have said so; and had it been in their minds there can be but very little question that they would have said so, as it appears to me.

But what does "President pro tempore" mean? It has never been held, that I know of, until this discussion, that "pro tempore" means during the period of the absence of the Vice President or during the period that he is exercising the functions of President of the United States; "pro tempore" does not mean that, or it never did until now. It has always been understood to mean—and I believe there is as little question about its uniformity of construction as of any words that ever appear in proceedings—"for the time being;" that is, the instant, the present time, and not for any future time, either to-morrow or next day. A president or an officer, anything "for the time being" is for the present time, and to-morrow would be another time; and, but for the construction that we have put upon this clause of the Constitution, and which we have affirmed by the resolutions we have already adopted, I should have had no doubt that it would have been the duty of the Senate every morning during the absence of the Vice President to elect a President pro tempore for that day. I should have had no doubt about it at all; but we have construed by a long course of usage the duration of the office of our President pro tempore not to terminate with the particular day of our session upon which he is called to the chair; and so we have affirmed it now to be our law, and I believe it to be.

I am fortified in this opinion completely by the state of the English law upon the subject at the time the Constitution was made, and, indeed, ever since,

until quite recently. Of course everybody knows that the Senate was constituted upon the model of the House of Lords. Senators do not hold their offices for life, as the Lords do, but they hold them independent of direct elections by the people. They are selected by other bodies than the people—by the legislatures of the States—and they have a limited term. Like the Lords, they have regularly a Presiding Officer who is not one of their body, but who is an independent and external officer, if I may use that phrase. The Lord Chancellor in England, or, if he be dead, the Lord Keeper of the Great Seal, is the regular presiding officer of the House of Lords, not a member of the body, having no vote. In the practice of the House of Lords and under its immemorial proceedings, when the Lord Chancellor was absent, just as we say, "when the Vice President is absent," the Lords chose a speaker of the Lords pro tempore, the very phrase being used in all the journals and proceedings, as well known a parliamentary common law in England as any other law that existed in England at the time our Constitution was made. But you will find, when you look at the journals of the Lords, that although their standing order reads as it appears in May's book on parliamentary law—I can not find the original order—that they are to choose a speaker pro tempore "during the vacancy," which is a much stronger term than simply "pro tempore;" yet every morning they choose a fresh speaker pro tempore, usually the same gentleman, of course; but I am speaking of the officer. He only holds by virtue of the standing orders of the Lords from day to day, and the first thing after prayers are said and the house is counted, in the absence of the Lord Chancellor, is to elect a speaker pro tempore, and he holds through that day. The next day, the Chancellor not appearing, the same ceremony is gone through with, until the Lord Chancellor appears.

I say that the wise men who framed the Constitution and who were modeling it in this respect somewhat upon the methods and proceedings and characteristics of the Government with which they were most familiar, in providing for this President pro tempore of the Senate in the absence of the Vice President, must have expected that those words would have the same construction that they were known to have by the immemorial practice and common law of the House of Lords in Great Britain. So then our historic knowledge, as well as the words of the Constitution, clearly proves to my mind that the President pro tempore holds his office at the pleasure of this body, and that every day, if we like, we may select another officer, and but for our long practice—a very convenient one, too, indeed—I should have said, if the question were a new one, that he would only hold his office from day to day, without an order of the Senate, which it would be perfectly competent to make, of course, that he should hold for any definite length of time or until the reappearance of the regular presiding officer.

But, certainly, Mr. President, whatever may be said upon this topic, the Constitution does not fix the term of the President pro tempore. The most that can be said is that it leaves it open to doubt and dispute. It does not define how long he shall exercise the powers of that office. Now, then, the law in this country is perfectly well settled (and every lawyer I suppose is familiar with it), decided by the Supreme Court of the United States more than once, that where the Constitution does not fix—that is the language of the court—the term of an officer appointed under the Constitution, he is removable at any time at the pleasure of the appointing power. I am not now discussing the question of removals by the President, whether with or without the consent of the Senate. That is open to dispute, as we all understand. But as the Supreme Court say, in the case of Hennen in 13 Peters's Reports (which I have brought in for any gentleman to read if he likes), whether the assent of the Senate be necessary to a removal by the President of an officer appointed under the Constitution, all parties agree, and it is clear law, that the appointing power, the whole body of the appointing power, has the clear right to remove at its pleasure any officer appointed under the Constitution whose term of office is not fixed by it. The Constitution confessedly does not fix the term, by any definite language of any sort, during which this officer shall exercise his functions. It does not say that he shall hold until the end of the term of the Vice President who is exercising the office of President of the United States or that he shall hold until the Vice Presiden returns. It says he shall hold "pro tempore." Now it is said to be open to doubt whether "pro tempore" means for the time being or for some future time to be determined by some subsequent event; but in any case, as the Constitution has not

defined how long this officer shall hold, the law is clear, as with every other officer of the United States whose term is not fixed, that the power of appointment includes the power of removal and change, when, therefore, the Senate of the United States has power to appoint a President pro tempore and other officers, as the committee so well state in their report, there is carried in that grant of power also the right to change those officers at pleasure. So it appears clear to me that this third resolution declares a plain principle of law, which is binding upon us, and which it is our duty for the benefit of the future to declare.

Then, sir, when we look at the serious inconveniences that would arise if you were to take the other construction, I am sure, if we had any doubt upon the language of the Constitution and the history of the subject and the decisions of the Supreme Court, we should solve that doubt in favor of the constant power of the Senate to choose its presiding officer pro tempore at any time it pleases. Where should we find ourselves if the construction is correct that the power of the Senate once exercised is exhausted, and can not be again exercised until there is a new absence of the Vice President? Then, if the President pro tempore were to be sick or to die, where would be our power? The Constitution, under the peculiar circumstances that it was made, gives us an express power to do a particular thing, and that is to elect a President pro tempore in the absence of the Vice President. It does not give us power to elect a President pro tempore in the absence of the preceding President pro tempore. It is only "in the absence of the Vice President" by name. Now, if this power is to be exercised only once, then, when the Vice President is absent and the President pro tempore already elected is absent, we must be adjourned from day to day by the Secretary until we can find one or the other of these gentlemen. That would never do. If you hold, on the other hand, that the power is not exhausted, and that you may exercise it in the absence of the President pro tempore, you exercise it in his absence not by the force of the Constitution which says you may do it then, but you exercise it by force of the Constitution which says that in the absence of the Vice President you may elect a President pro tempore. The Vice President being absent, although you have one President pro tempore, he is gone, and then you have another. So that it is either the whole thing or nothing, as it appears to me. If the power is exhausted when once exercised, there is no power to supply a vacancy existing in the office of President pro tempore by the Constitution which we are now speaking of. If the power is not exhausted by its exercise in one case, it is a constant power, which the Senate may exercise on any occasion that it deems fit. One fit occasion would be the absence of the President pro tempore. Another fit occasion might be his becoming unfit to discharge the duties of his office. Another fit occasion might be as I should say instead of being contrary to propriety, in all propriety the case that was mentioned the day before yesterday, when the parties of this body being responsible for the exercise of governmental powers and for the course of legislation should change; and when parties should change and one party should find itself brought into power with a President pro tempore of the other party in the chair, exercising the great powers that the President of the Senate does exercise, I should say it would be the duty of that party, instead of a wrong, to change the President pro tempore, because he is the organ of the responsible body, and without his being in harmony with the political views of the gentlemen in the majority their will might often be frustrated. He appoints special committees; he does a thousand things which are of the greatest importance to the political interests of the country; and to say that one party may saddle another for the time being with a President pro tempore, and that that other party, when the times shall change, and they become responsible for the administration of affairs, can not oust him and have a presiding officer of their own, would, in my opinion, be contrary to the principles of republican government. A party can not get on that way, and it ought not to get on that way.

So I say, Mr. President, that not only the Constitution itself as it reads, the history to which I have referred and which is indisputable, and what is known to be the regular course of practice and the settled law in England when the Constitution was made, but the decisions of the Supreme Court of the United States upon the general subject of removals from office, and the extreme inconvenience of any other construction of the Constitution, make it plain, as it appears to me, that we ought to adopt this resoluion.

Mr. WALLACE. Will the Senator from Vermont permit me to ask him whether this resolution would cover the case of the devolving of the Presidency of the

United States on the incumbent of the chair, the President of the Senate pro tempore? In other words, does he hold that the Senate would have the power to change the President pro tempore of the Senate after the Presidency of the United States had been cast upon him by the operation of the act of 1792?

Mr. EDMUNDS. This resolution does not refer to that question at all. We are merely asserting the general power of the Senate. Whether the Senate would have power to change its President pro tempore after he by law should be required to perform the duties of President of the United States is of course entirely another question. If it is of any advantage to my friend from Pennsylvania to know my opinion, although it is entirely outside of this debate, I will state it frankly. I think the power of the Senate over its President pro tempore, which exists in the nature of its own body and under the Constitution, can not be cut short by any act of Congress whatever.

Mr. WALLACE. Mr. President, I have given this question a very cursory examination, and I regret to say that from that examination I am compelled to differ with the opinion of the majority of the committee. I shall briefly give my views to the Senate, if they will hear me.

The tenure of the office of President pro tempore of the Senate is not, I think, as the committee say it is, like that of the Secretary or the Sergeant at Arms or the Chief Clerk of the Senate. He is, in my view, an officer of the United States as well as of the Senate. The fifth clause of section 1 of article 2 of the Constitution provides as follows:

"In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."

The obvious meaning of the word "officer" here is an officer of the United States, and I assume that neither the Senator from Vermont nor any other lawyer will dispute that the meaning of the word "officer," as used in this clause of the Constitution, is not an officer of the Senate, but an officer of the United States. This obvious meaning of the word "officer" is confirmed when we refer to the proceedings of the convention that framed the Constitution. The latter part of this clause first appears in a motion made September 7, 1787, to insert these words:

"The Legislature may declare by law what officer of the United States shall act as President in case of the death, resignation, or disability of the President and Vice President; and such officer shall act accordingly, etc."

This motion was adopted by a vote of States, and this and the other provisions adopted were on the 8th referred to a committee to revise the style, who were to arrange the articles agreed on. Of this committee Messrs. Hamilton and Madison were two. A report came in on the 12th, and the words now in the Constitution are found therein.

It is thus seen that the intention of the framers of the Constitution to place the possible succession to the presidency only upon an officer of the United States is plain and manifest.

We next find that the contemporaneous interpretation of this clause of the Constitution is in accord with the position I assert. The act of March 1, 1792, which was framed by many of those who were in the Federal convention, points out the President pro tempore of the Senate as an officer of the United States upon whom the succession may fall. Is it reasonable to suppose that Madison and Sherman and Gerry would have clothed with such grave possibilities an official whose tenure and dignity were no greater than those of a Sergeant at Arms.

But we are not left to conjecture on this subject, for in the debates during the passage of the act of 1792 this very question was mooted. Pending the debate upon the bill it was both asserted and denied that the President pro tempore was an officer of the United States within the meaning of clause 5 of section 1 of article 2, but after a prolonged struggle the question was settled affirmatively, and the bill became a law. Both Roger Sherman and Elbridge Gerry asserted the position that the President pro tempore was an officer of the United States, and the latter declared that the Speaker of the House had equal dignity. Madison objected to the selection of the President pro tempore or Speaker for the succession, not because he was not an officer, but because if he

became President he would be both Senator and President, and might be instructed by his State.

The express words in the text, the intention of the framers of the Constitution as shown by the adoption of the clause referred to the committee on revision of style, contemporaneous legal interpretation—the words of the men who framed the Constitution themselves—unite in affirming the position that the President pro tempore of the Senate is an officer of the United States; and, unless we utterly and completely nullify and ignore the term "officer" in the clause that I have read from the Constitution, no other conclusion is possible. It is as plain as that two and two make four. If the legislation of 1792 be worth anything at all, it interprets the provision of the Constitution to which I have referred, and the adoption by that act of 1792 of the President pro tempore of the Senate, and confirms the position I have taken.

That he was in those days regarded as more than a mere official of the Senate is shown by the practice then originated at his election to officially inform both the President and the House of Representatives thereof. This occurred in April, 1792, in March, 1793, and has been continued since. If he be a mere officer of the Senate, why should we dignify him by sending information of his election to the House of Representatives and to the President? That these views have had support in the past is found from what Mr. Seward said in the Senate in December, 1854, and I will read what he said. Pending a motion to proceed to the election of a President pro tempore, he said:

"Mr. SEWARD. Before we proceed with this election, I should like to have the views of Senators in regard to the effect of the appointment—whether it is to be an absolute appointment of a President pro tempore, and what the tenure of his office is to be. I will state very freely my own opinion in going into this election, and it is this: That there can be but one person at the same time holding the office of President pro tempore of the Senate of the United States, and that that person will hold his office until it shall again constitutionally become vacant; so that in the case of a vacancy occurring in the office of the President of the United States the person now to be chosen to fill the office of President pro tempore of the Senate would succeed to that high trust, and become the Chief Executive Magistrate of the United States. (Congressional Globe, 3d Cong., 2d sess., p. 4.)"

Thus affirming a constitutional tenure on the part of the President pro tempore of the Senate. Now, if he be an officer of the United States holding this place it remains to discover the tenure by which this officer of the United States holds his place. This can only be reached by learning the true meaning of clause 5, of section 3, of article 1, of the Constitution. It is in these words:

"The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States."

The Senate is a perpetual and is intended to be a conservative body, and that construction which will produce stability and permanence in its organization, and exclude uncertainty, passion, or party prejudice, is to be preferred. While I concede that the subject is not free from doubt, yet, in considering the purpose to be attained, the evils to be avoided, the ordinary meaning of the words used, and the rights and privileges of the incumbent under the act of 1792, and as an officer of the Government, my mind reaches the conclusion that the words pro tempore ought not to be construed so narrowly as to reduce the tenure of the official from a term held until the Vice President shall return, or the term of office of the incumbent shall expire, to a term held at the mere will of the majority of this body. The words "pro tempore" are a designation of the official in my view, and do not measure his official term. Or, if they are to be used for that purpose, then they relate to and are synonymous with the words which follow, a President pro tempore, or for the time being; that is to say, for the time during which the Vice President is absent, or while he exercises the office of President.

This seems plainly apparent from the action had in the Federal convention. The report of the committee of 11 contained the clause in these words:

"The Vice President shall be, ex officio, President of the Senate, except when they sit to try the impeachment of the President, in which case the Chief Justice shall preside, and excepting, also, when he shall exercise the powers and duties of President, in which case, and in case of his absence, the Senate shall choose a President pro tempore."

This was adopted by the convention, and referred to the committee of revision and style. It came back substantially in the form in which it is now in the

Constitution, and was adopted with the single exception that the words "ex officio" were stricken out. In the original clause the words "pro tempore" can only relate to one of the two cases named, and can not be used to measure his tenure of official place.

"And excepting, also, when he shall exercise the powers and duties of President, in which case, and in case of his absence, the Senate shall choose a President pro tempore."

Here is a plain designation of the official by the term "pro tempore;" here is plain reference to the case of the absence of the Vice President or his occupancy of the presidential chair.

The dignity of the place, as shown by the plain words of the fifth clause of section 1, of article 2, and by contemporaneous legal interpretation, the necessity for certainty in the official upon whom the succession may fall, the conservative character of the Senate, the plain intent of the framers of the Constitution, and the meaning of the words used constrain me to the conclusion that the office of President pro tempore of the Senate is an office as well of the United States as of the Senate, and that his official term is ended only by the expiration of his service as Senator, by the return of the Vice President, by impeachment and conviction for offenses committed as President pro tempore, or by expulsion from the Senate.

It is asked whether we could appoint a second President pro tempore in the absence of the President pro tempore elected under the Constitution? The answer to that is found in the practice of the body. Richard Henry Lee was elected the first President pro tempore of the Senate. At the succeeding session of the Senate he did not return, or he resigned subsequently to the meeting of the Senate, and they then elected as President pro tempore for the occasion John Langdon, who sat in his place until the expiration of the succeeding session. So there is no difficulty in that question.

It seems to me, Mr. President, that the whole question resolves itself, not upon parliamentary law, but upon the plain interpretation and meaning of our own Constitution. It is found here. The constitution of this body, as well as the Constitution of the United States, seems to me to clothe this officer with dignity and with power, and that he ought not to be limited.

Mr. MORTON. Mr. Presiden, until this question was brought before the committee I had never heard a suggestion from any source that the President pro tempore of the Senate was not removable at the pleasure of the Senate. I have no doubt that the reason for saying anything about the Senate having power to elect a President pro tempore grew out of the clause suggested by the Senator from Vermont [Mr. Edmunds]. The fourth clause of the third section of the first article says:

"The Vice President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided."

Now, to rebut the presumption that he was the only President of the Senate and that the Senate could not hold a session in his absence, the next clause provides that in his absence the Senate may elect a President pro tempore. When the Vice President is absent the Senate is then on the same footing with every other deliberative body; that is, it has the power to elect its own presiding officer. The Constitution makes the Vice President ex officio the President of the Senate. The Senate has no control over him except by impeachment, articles being preferred by the House of Representatives. That is an arbitrary provision, not common to most deliberative bodies. Then, to rebut any presumption that in the absence of the Vice President the Senate could not hold a session, but must wait until he came back, it provides that the Senate may elect a President pro tempore. In other words, it simply puts the Senate then on the footing of other deliberative bodies that elect their own presiding officer.

What is the law in regard to deliberative bodies that elect their own presiding officer? The general law established by parliamentary usage, not only in England, but in this country and every other country, in State legislatures, in city councils, whatever may be the grade or character of the presiding officer or of the body, is that in the absence of any provision giving to them another person as a presiding officer they may elect their own presiding officer and remove him at pleasure. The common parliamentary law is that a presiding officer elected by the body itself holds at the pleasure of the body. I will read from Cushing's Treatise on Parliamentary Law:

"It is essential, also, to the satisfactory discharge of the duties of a presiding officer that he should possess the confidence of the body over which he presides in the highest practicable degree. It is apparently for the purpose of securing

this necessary confidence that the presiding officer is required to be chosen by the assembly itself, and by an absolute majority of votes; that he is removable by the assembly at its pleasure; and that he is excluded from all participation in the proceedings as a member. Each of these particulars requires to be briefly considered."

Again—

"The presiding officer, being freely elected by the members, by reason of the confidence which they have in him, is removable by them, at their pleasure, in the same manner, whenever he becomes permanently unable, by reason of sickness or otherwise, to discharge the duties of his place, and does not resign his office; or whenever he has in any manner, or for any cause, forfeited or lost the confidence upon the strength of which he was elected."

That is the common law applicable to all deliberative bodies who elect their presiding officers; and the reason is just as strong here as it is anywhere else. Now, let me consider for a moment the arguments that have been offered on the other side. First, the argument offered by my friend from North Carolina [Mr. Merrimon]. He admits that the Senate can remove a President pro tempore for cause. Am I right?

Mr. MERRIMON. Yes, sir.

Mr. MORTON. On articles of impeachment being preferred by the House?

Mr. MERRIMON. By dealing with him as a Senator.

Mr. MORTON. The Senate, according to his admission, may of its own motion change this officer; he says "for cause." Who is to judge of that cause? The Senate. Whether it be good cause or bad cause, indifferent cause or no cause at all, the Senate is the exclusive judge of it. It may be because he has committed high crimes and misdemeanors, or it may be that he does not represent the sentiments of a majority of the body, or that he is not satisfactory as a presiding officer, or for any other reason. The Senate may remove him, he says, for cause. Well, as the Senate is the exclusive judge of that cause, it seems to me that admits the whole case. When the Senate comes to make the removal it is not bound to assign a cause; it is not bound to give any reason for it. It is presumed there must be some cause, but whether the cause is sufficient, reasonable, or unreasonable, the Senate is the exclusive judge. Therefore it amounts simply to this, that the Senate, according to his own admission, may change the presiding officer at pleasure. Where is the law that requires the Senate to prefer charges against the presiding officer? Where is the law that specifies the character of the cause that must be assigned? There is no law of that kind. The cause is the pleasure of the Senate. Whatever reason there may be sufficient to move a majority of the Senate to make a change, that is all the cause that is required; and the Senate is not required to state it, to put it in writing, or to have it expressed verbally upon the floor. Take my friend's own doctrine and it amounts simply to this, that the President pro tempore holds at the pleasure of the Senate.

Mr. NORWOOD. Will the Senator allow me to ask a question?

Mr. MORTON. Certainly.

Mr. NORWOOD. Suppose the President of the United States were to die to-day; would not our present President pro tempore be President of the United States to-morrow; and, if so, could we change him and elect another man to that office to-morrow morning? Would he not become instantly upon the death of the President of the United States the occupant of the executive office? Could we then to-morrow by a vote here change that officer?

Mr. MORTON. I think I comprehend the question of the Senator from Georgia, and that it is this: When the duties of President of the United States are devolved upon the President pro tempore of the Senate by the death of the President of the United States, can the Senate then change the President pro tempore at pleasure, and thus in effect change the Executive of the nation? That is the question. Upon that point I am not prepared to answer. I do not know what would be the effect of the law of 1792; whether that law would have the effect to fix the tenure of the President pro tempore or not; but that it can have no effect upon his office before the contingency happens is perfectly clear. Until that time comes the question suggested can not be raised. The idea that, because in a certain contingency, the President pro tempore may have the duties of President of the United States devolved upon him, therefore the tenure of his office is changed in advance of that contingency, it seems to me can not be sustained by argument. If the act of 1792 is to have this effect upon the tenure of the President pro tempore before the contingency happens, it has the same effect upon the tenure of the Speaker of the House, because in a certain contingency the Speaker of the House may become the acting Executive. There-

fore, according to this argument, the Speaker of the House, as soon as he is elected, must hold for the Congress, and he can not be removed. Has that ever been the understanding? If that construction is correct, not only has the President pro tempore of the Senate now a fixed term until after the next Presidential election and a new Vice President shall be elected, but the Speaker of the House has a fixed term for two years, and can not be changed. That certainly has never been the understanding. Nothing of that kind was ever contemplated. But when the contingency happens, when the duties of the President in office are devolved either upon the President pro tempore of the Senate or upon the Speaker of the House, whether he is after that contingency under the operation of the act of 1792 still removable by the Senate or the House is a different question. Certainly there can be no sound pretense that the act of 1792 would have an effect upon the tenure either of the President pro tempore of the Senate or of the Speaker of the House in advance of the contingency happening.

Mr. KERNAN. Will the Senator allow me to ask a question?

Mr. MORTON. Yes, sir.

Mr. KERNAN. Supposing the President of the United States dies and the President pro tempore of the Senate enters upon the functions and is acting as President, could not the Senate appoint a new President pro tempore?

Mr. MORTON. That is precisely one of the difficulties surrounding this question. That contingency has never yet happened. It was seriously discussed among Senators when the impeachment of President Johnson was pending, whether, in case the President pro tempore of the Senate should have the duties of the President of the United States devolved upon him, he would have to leave this Chamber and we elect another. That was a question which was then considered; and it is not free from doubt. My own impression is that he is still the President of the Senate, and that he has the duties of President of the United States devolved upon him in addition thereto; and I am informed, in regard to the president of the senate in one of the States upon whom the office of governor devolved, the governor having been impeached and removed from office, that the construction there was given to a similar provision that the president of the senate was still presiding officer of the body, and came into the senate every day and called the body to order, and then called a member to the chair. I believe that was the case in Arkansas.

Mr. CLAYTON. Yes, sir.

Mr. CONKLING. There was a case of the same kind in Illinois.

Mr. MORTON. The Senator from New York says that a similar case occurred in Illinois. I think myself the law was erroneous in the beginning. Such a provision ought not to have been made.

Mr. STEVENSON. What law?

Mr. MORTON. The law devolving the duties of President of the United States on the President pro tempore of the Senate. It was an error in the beginning.

Mr. NORWOOD. The act of 1792 is one which provides for the succession to the Presidency of the United States. It provides that the President pro tempore of the Senate may become President of the United States.

Mr. MORTON. Yes, sir.

Mr. NORWOOD. That is an act of Congress.

Mr. MORTON. Yes, sir.

Mr. NORWOOD. We are now construing a clause in the Constitution which gives us power over the President pro tempore to make and unmake him, as I understand the Senator from Indiana to contend. Now, if his position be correct, would it not follow that the act of Congress would divest the Senate of a constitutional power? The act provides for this officer becoming President of the United States, and in that event we should lose control of him. In that event the act of Congress would supersede a power vested in the Senate by a provision of the Constitution, which would be a legal impossibility.

Mr. MORTON. I said that that was a question about which there was doubt; but my impression offhand is that he would still be President pro tempore of the Senate, even after the duties of President of the United States had been devolved on him under the act of 1792. But I say this in answer to my friend from Georgia, that the effect of the Constitution, what this provision means, certainly can not be changed by the subsequent passage of a law. The act of 1792 can have no effect upon the construction of this provision of the Constitution.

Mr. NORWOOD. Now, then, if I understand the Senator from Indiana, his position is that notwithstanding the President might die to-day and the President pro tempore of the Senate become President of the United States to-morrow

by operation of the act of 1792, we still could exercise our constitutional power over that officer as the President of this body and change him.

Mr. MORTON. That is my impression; but that case has not occurred. I simply mean to say that whatever may be the effect of the act of 1792 in fixing the term of the President pro tempore, it can have no such effect until the contingency takes place, even if the Senator is right about it. It can not have that effect in advance of the happening of the contingency.

Mr. NORWOOD. Would it not follow then, I will ask the Senator, by the exercise of the power for which he contends, that the Senate of the United States would have the constitutional power to elect a President of the United States?

Mr. MORTON. No, sir; not the President of the United States.

Mr. NORWOOD. If the President pro tempore of the Senate becomes President of the United States eo instanti on the death of the President, and we the next day can change that officer, an officer of this body, and put another in the chair, would we not virtually elect the President of the United States?

Mr. MORTON. We would not elect a President of the United States at all, I submit to my friend. The President pro tempore of the Senate does not become Vice President; he simply is the presiding officer of the Senate. He does not lose any of his functions as Senator; he votes on every question; his name is called on the roll; and he has a right to call any other member to the chair and come down and take part in the debates. He is in no sense the Vice President of the United States; and when the duties of President of the United States are devolved upon the President of the Senate pro tempore, he does not become President of the United States, but he is simply performing the duties of that officer for the time being under the law.

A little further, Mr. President. My friend from Pennsylvania [Mr. Wallace] read some remarks by Mr. Seward in the Senate of the United States to which I want to call the attention of the Senate, inasmuch as I put a directly different construction upon the effect of that speech from that contended for by the Senator from Pennsylvania. This was in 1854:

"The Secretary called the Senate to order. * * *

"Mr. JONES of Iowa. I offer the following resolution:

"'*Resolved*, That the Senate do proceed forthwith to the choice of a President pro tempore.'

"Mr. SEWARD. Before we proceed with this election I should like to have the views of Senators in regard to the effect of the appointment—whether it is to be an absolute appointment of a President pro tempore, and what the tenure of his office is to be. I will state very freely my own opinion in going into this election, and it is this: that there can be but one person at the same time holding the office of President pro tempore of the Senate of the United States, and that that person will hold his office until it shall again constitutionally become vacant; so that in the case of a vacancy occurring in the office of the President of the United States the person now to be chosen to fill the office of President pro tempore of the Senate would succeed to that high trust and become the Chief Executive Magistrate of the United States."

I agree with that entirely. There can be but one President pro tempore at a time. Now suppose the President pro tempore has a fixed term until the Vice President comes here; to-morrow morning he is sick; he can not get here. Can not the Senate hold a session? Can we not call another Senator to the chair? What is he? Is he not President pro tempore? My friend from North Carolina says no; he is only an occasional officer.

Mr. MERRIMON. I say this: he is not the President pro tempore recognized and provided for in the Constitution.

Mr. MORTON. I think I know what my friend said; I have it written down here. He said that we could elect in the absence of the first President pro tempore another, but that the second President pro tempore is an occasional officer. I think he is rather occasional; but that he is President pro tempore within the meaning of the Constitution is very clear. That thing occurred precisely in the history of the Senate, and I want to refer the Senate to the case.

On the 9th day of June, 1856, Jesse D. Bright was President of the Senate pro tempore (the Vice President, William R. King, being dead), and addressed the following note to Hon. Charles E. Stuart, a Senator from Michigan:

"Sir: Do me the favor to take the chair to-day.

"Yours, truly, "J. D. BRIGHT."

Mr. Stuart appeared in the Senate, took the chair, and called the Senate to order. The power of Mr. Bright, as President pro tempore, to depute Mr. Stuart to take the chair and preside over the Senate was denied by several

Senators, whereupon Mr. Stuart was by resolution elected President pro tempore of the Senate. Afterwards, on the 11th of June, Mr. Stuart resigned his office as President pro tempore, and, on motion, Jesse D. Bright was reelected President pro tempore. The idea that Mr. Bright continued to hold his office as President pro tempore by virtue of his first election was not suggested by anybody.

Mr. Bright was President pro tempore, the Vice President being dead. He went away, and Mr. Stuart was elected President pro tempore. When Mr. Bright came back, Mr. Stuart, as a matter of courtesy, resigned his position, and then the Senate reelected Mr. Bright. The idea that Mr. Bright had a fixed term and could take the chair by virtue of his first election did not occur to anybody.

Mr. MERRIMON. There was no debate about it.

Mr. MORTON. There was no debate about it. The Senator's point did not suggest itself to anybody at that time. I have sometimes said that while there were new inventions, there were no new discoveries in constitutional law; but I presume I was mistaken in that.

One argument made, I think by my friend from Florida [Mr. Jones], and perhaps by my friend from North Carolina [Mr. Merrimon] also, was that the President pro tempore of the Senate ought to be independent of the body; that if he is removable or holds at the pleasure of the body he is not independent. Why should he be independent? He ought not to be independent. He is the mere agent of the body; he is there for the purpose of presiding over the body, and he ought to be subject to the will of the body just like the presiding officer of every other deliberative body; and that is the precise reason given in the general law why the presiding officer can be changed at any time, that the majority of the members have a right to have a presiding officer that suits them.

Mr. MERRIMON. May I suggest to my friend that the Constitution provides expressly that the regular presiding officer of the Senate shall be beyond the control of the Senate, to wit, the Vice President of the United States.

Mr. MORTON. Certainly, in that case the Vice President is beyond our control. He is made President of the Senate by the Constitution. We have no control over him; but when we call in a temporary presiding officer he does not become Vice President; he has no casting vote; he is simply a presiding officer, just like the presiding officer of the House of Representatives, or of any house of a legislative body in one of the States; and there is the same reason for giving the Senate the control of him that there is for giving the House of Representatives the control of their Speaker. Does anybody doubt that the House can to-morrow change the Speaker and put a new one in the chair?

Mr. MERRIMON. I do.

Mr. MORTON. My friend says he does, but it is the first time I ever heard that doubt expressed by anybody. It is laid down expressly by Mr. Jefferson, and I may say by all works upon parliamentary law, that the Speaker can be changed by the House at its pleasure. The Senator from Massachusetts [Mr. Dawes], who has long been a distinguished member of the House, tells me that that has always been the understanding in the House. Although they have had no occasion to exercise the power, it has always been the understanding that the Speaker could be changed at the pleasure of the House.

Mr. MERRIMON. Mr. Jefferson stated the general law. He did not undertake to discuss how far the Constitution controlled that particular officer. I think it very questionable whether the House has the power under the Constitution to remove at pleasure the Speaker.

Mr. MORTON. I understand that my friend thinks so.

"The House of Representatives shall choose their Speaker and other officers," says the Constitution. It has the same power to choose the Speaker as to choose the other officers, and to choose the other officers as to choose the Speaker. If the House has not power to change the Speaker, it has not power to change the Clerk and the Sergeant at Arms; and, once elected, they must hold throughout the Congress, however distasteful that may be to the House. Will the Senator contend for that? And yet the power of the House to choose the Speaker is just the same as it is to choose their other officers; and if the Speaker can not be removed at pleasure, their other officers can not be; and so it is here in regard to the Senate. "The Senate shall choose their other officers, and also a President pro tempore." It is put upon the same footing precisely; and if the Senate has not the power to change the President pro tempore, it has not the power to change the Sergeant at Arms. The Senate has

the same power to elect these officers in either case, and the tenure is left precisely the same.

I believe, Mr. President, I have no occasion to say more.

Mr. STEVENSON. Mr. President, I desire to say that the usage of the Senate upon the question of the tenure of the President pro tempore for 70 years has been directly opposed to the argument of the Senator from Indiana. I confess frankly that precedents in legislation are not necessarily conclusive evidence of what the law is. But when there has been, as in this case, a long unbroken series of precedents, always in one direction, it is strongly persuasive that their construction of this clause of the Constitution is the true one. This argument finds additional support when we ascertain such jurists as Judge Collamer, of Vermont, and James A. Bayard, of Delaware, able and honored members of the legal profession, opposed in political sentiment, concurring in opinion that the office of President pro tempore of the Senate is one of fixed tenure, and is not subject to removal at the mere pleasure of the Senate. The debates in 1861 show that Senators Collamer and Bayard differed—not upon the point of the permanency of the tenure of the President pro tempore, not upon the point that that officer did not hold his appointment at the mere pleasure of the Senate, as the pending resolution asserts. No, sir; they differed alone upon the point upon the duration of the appointment. Mr. Collamer held that the President pro tempore continued to hold his position during the absence of the Vice President, during the senatorial term of such officer, and that the return of the Vice President to the Senate did not terminate the tenure of the appointment of President pro tempore; while Mr. Bayard, upon the other hand, argued that the true limitation of the tenure of the President pro tempore during his term as Senator was the return of the Vice President. In other words, as soon as the Vice President took his place in the Senate the office of President pro tempore ceased and another election became necessary.

Both these eminent legal minds concurred in opinion that it was not competent for the Senate to remove the President pro tempore at their whim and pleasure. The views of each were in direct opposition to the report of the committee and to the conclusions reached by them.

There was no difference of opinion between them on the point that the office of President pro tempore was fixed by the Constitution, although they reached different results as to its duration.

I concur in the opinion of Mr. Bayard, so ably vindicated by the masterly argument of the Senator from North Carolina [Mr. Merrimon] in the Senate on yesterday. I could, I am sure, add nothing to what was so forcibly and well said by him in support of his views of this question, and in which I so heartily concur, and I should say nothing but for the construction so earnestly insisted upon by the Senator from Indiana [Mr. Morton] in his argument to-day, and which, if it prevail, may lead to pernicious results, foreseen by the framers of the Constitution and intended to be avoided and guarded against by this clause of the Constitution creating the office of President pro tempore of the Senate.

The honorable Senator from Indiana insists that the act of 1792, declaring that the President pro tempore shall upon the happening of certain contingencies become President of the United States, can not change the Constitution. I admit it. But that Senator will not deny that an act of Congress passed so shortly after the adoption of the Constitution as this act of 1792 constitutes a strong contemporaneous implication as to what the framers of the Constitution intended in creating the office of President pro tempore of the Senate, and as to what that Congress thought as early as 1792 was the true construction of that clause of the Constitution creating that office.

Examine the clause itself:

"The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided."

The Constitution creates this office. The incumbent is not elected by the Senate. He holds his office independently of the body over which he presides. This is an exception to usage of parliamentary law, which allows deliberative bodies to choose their presiding officers. There is no disagreement or doubt on this point. The Constitution then proceeds:

"The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States."

The Senator from Vermont [Mr. Edmunds] says that nobody questions the right of the Senate to choose its officers. That is a canon in parliamentary

law disputed by nobody. Let that be admitted. Let it further be conceded that the framers of the Constitution were well and thoroughly versed in parliamentary law, and being so versed, none knew better than they that the Senate possessed the right under that law to choose a presiding officer in the absence of the Vice President. With this knowledge of parliamentary usage the pertinent question arises, Why did they insert this latter clause and create the President pro tempore of the Senate a constitutional officer? It was wholly unnecessary, as argued by the Senator from Vermont. The Senate possessed the right to elect a President pro tempore. Why should the Constitution create this office? Why did the wise men who framed that instrument create an office and define its duties? They surely had an object in its creation. What was it? In the legal construction of any instrument no canon of the law is more strongly established or better recognized than that you shall so construe it as to make all its provisions harmonize, if possible, and that effect shall be given to every expression contained therein.

The first question which arises in the clause of the Constitution is, What was the intention of the framers of this Constitution in creating the President pro tempore of the Senate a constitutional officer? The Senate would have had the right to choose him without it. It will not do to say that this is an unnecessary provision; it would be disrespectful to the memory of those wise men to say that this clause is mere surplusage. You must therefore so construe this clause as to give to it some definite effect. You must search for the intendment of the framers in creating this office of pro tempore President of the Senate. When you do so, I am clearly persuaded that their purpose was to make him a permanent officer. Permanent how long? Clearly during the absence of the Vice President. But is that the entire limitation? No, sir. The Constitution says in addition during the period the Vice Presdent is discharging the duties of President of the United States in the event of the death or removal by impeachment of the latter-named officer. I admit that the tenure of the President pro tempore is of uncertain duration. Still its tenure is fixed and determined, not by the Senate, but by the Constitution; not for any specified time, but during the absence or death of the Vice President or while he is discharging the duties of President. If the Vice President returns to the Senate and takes the chair, the tenure of the President pro tempore is determined and ceases, and a new election is legal. If the Vice President never returns, then the President pro tempore continues until his term of Senator expires; hence the act of 1792 by its provisions recognizes this construction of the clause as the true intendment of the framers of that instrument. Hence a uniform series of precedents for 70 years in recognizing the President pro tempore of the Senate during the absence of the Vice President and until his return as its permanent presiding officer, not removable except for cause.

Mr. President, if I am not in error some members of the convention which adopted the Constitution of the United States were members of the Congress which passed the act of 1792. If this be true, it only strengthens the construction of this clause insisted on by me. If any members of that convention were in Congress in 1792 (of which I am not positive), the act is persuasive evidence of what they thought upon this subject. That act declares:

"That in case of removal, death, resignation, or inability, both of the President and Vice President of the United States, the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives for the time being, shall act as President of the United States until the disability be removed or a President shall be elected."

That Congress clearly legislated upon the assumption that the President pro tempore was a permanent officer during the absence of the Vice President.

Mr. CONKLING. Will the Senator allow me to ask him a question?

Mr. STEVENSON. With great pleasure.

Mr. CONKLING. Suppose, in such an event as has been suggested, the President pro tempore of the Senate should enter upon the execution of the duties of President of the United States and his term as Senator should expire before the end of the presidential term, is it the opinion of the Senator from Kentucky that he would continue to be acting ex officio as President of the United States, although the term of his senatorship, by virtue of which he came to be President pro tempore, had expired?

Mr. STEVENSON. I should think that he would continue to be President until the governors of the several States had, after being notified by the Secretary of State of the death of the President, caused an election of an electoral college

and a new election of President had taken place under the provisions of the act of Congress. The strongest answer against the argument of the Senator from Indiana [Mr. Morton], as I think, is to be found in the extraordinary results which might practically follow his construction.

The act of 1792, in the event of the death of the President and Vice President, makes the President pro tempore President of the United States until a new election can be held in accordance with the provisions of that act.

Does the Senator from Indiana sincerely believe that the Senate of the United States could remove at its pleasure the President pro tempore of the Senate after he became President of the United States? If the argument in favor of the right of the Senate to remove the President pro tempore at its pleasure be correct, the right to remove him after he was President would follow. If not, why not? Indeed, I understood the honorable Senator to claim that this right of the Senate to remove its President pro tempore would extend to him even if he was President of the United States. In support of that postulate, he insisted that in some of the States a lieutenant governor who had become governor still presided over the senate of the State when the State constitution contained provisions somewhat similar to that which we are now considering. He cited Arkansas, and was sustained in his statement by the Senator from Arkansas that such was the usage in his State. I shall certainly take no issue with the Senator from Arkansas as to what the provision of the constitution of that State is, or what has been the usage under it. But I think I can say, both to the Senate and to the country, if the Arkansas constitution contains such a provision, and the president pro tempore of the Arkansas Senate after being governor still presided over the senate, that out of the 37 States which constitute this Union Arkansas is the solitary State where such an anomaly exists. The case cited by the Senator from Indiana of the president of the senate becoming governor of the State occurred in Kentucky. Indeed, it occurred while I discharged the executive duties of that Commonwealth. I was elected lieutenant governor on the State ticket in 1867 with Hon. John L. Helm, who was elected governor. Gov. Helm died within a few days after taking the oath, at his own home in Hardin County, and without ever reaching the seat of government. By his death I as lieutenant governor became acting governor of the Commonwealth of Kentucky and acted as such for one year, when I was elected governor. There was then no lieutenant governor, the law having made no provision for the election of one. The lieutenant governor, by the terms of the constitution of Kentucky, is elected by the people and presides over the senate. When I was elected governor the senate of Kentucky elected Hon. P. H. Leslie president of that body, who, when I was elected to this body, was qualified as governor and served out my unexpired term. Had the people of Kentucky been informed that Gov. Leslie after qualifying as governor could still have presided in the senate, or that he was subject to removal from the office of governor except for cause, I am sure they would have been confounded.

Mr. President, any construction of any clause of the Constitution of the United States, or of the constitution of any State, which would confer upon the Senate of the United States the right to remove at its pleasure the President pro tempore after he had become President of the United States, without cause and at its pleasure, or which would in a State authorize the senate to remove the president pro tempore after he had become invested with the executive duties as governor or acting governor, must be erroneous. Such a construction carries its own refutation. It would lead to mischief which could not be estimated. It was against such results that the Federal Constitution, in my judgment, intended to provide.

The intimation of the Senator from Indiana that the President pro tempore of the Senate, after becoming President of the United States, might still preside in the Senate is novel and extraordinary. It seems to me unsupported by law and unsustained by usage. Such a doctrine finds no support in the usage of the State governments, unless in Arkansas.

Mr. THURMAN. If it does not interrupt the argument of my friend from Kentucky, I can name two instances in my own State in which the governorship of the State devolved on the speaker of the Senate, and in each of those cases it was decided that the speaker accepting the office of governor vacated his seat as senator.

Mr. CONKLING. Does the constitution devolve the duties on him?

Mr. THURMAN. In the very words of the Constitution of the United States.

Mr. CONKLING. That he shall act as governor?

Mr. THURMAN. Yes, sir; the words are copied from the Constitution of the United States. It was so held for a plain reason, too plain for argument, that it is impossible that the legislative and executive powers or the judicial and executive powers of government can be vested in the same individual.

Mr. STEVENSON. I have already cited the provision of the Kentucky constitution upon this subject and the uniform usage under it. I had never supposed that in any State where by the provisions of the constitution and laws the president of the senate became acting governor he could exercise at the same time his functions as senator. Without an examination of the constitutions of the several States, I hazard the opinion that Arkansas is the only State that tolerates the exercise of the office of governor and senator at one and the same time. I have no doubt it will be found that most of the constitutions of the States contain provisions on the subject similar to the clause of the Constitution of the United States which we are now discussing, and I have as little doubt that where the provisions are the same in the State as in the Federal Constitution the same uniform construction and usage have prevailed in all the State governments as to the office of lieutenant governor and president of the Senate that have for 70 years prevailed under the Federal Government.

Mr. MORTON. Will my friend allow me to interrupt him for a moment?

Mr. STEVENSON. Certainly.

Mr. MORTON. I would call the attention of the Senator to a case which perhaps he has not heard of, but nevertheless the authority of it will not be the less because it is strange to him. The constitution of Louisiana declares in so many words that in case of the death of the lieutenant governor the president of the senate shall become lieutenant governor. A gentleman by the name of Pinchback was president of the senate when the lieutenant governor died. He became the lieutenant governor, as it was understood, and afterwards became the governor of the State upon the impeachment of the governor. In the meantime his term as senator expired, but he continued to act as governor after that time until Gov. Kellogg was installed.

The Democratic Party of Louisiana, who were generally sound upon constitutional law [laughter], took the ground that when Pinchback's time as a senator expired he was out of office and had no right any longer to act as governor. On the other side it was contended that, inasmuch as the constitution of Louisiana had not simply devolved the duties of lieutenant governor on the president of the senate, but had said in so many words that he should become lieutenant governor, therefore he was lieutenant governor, and no reference could be had to the expiration of his office as senator. The case went before the supreme court of Louisiana, and that court decided, if I remember correctly, in favor of Pinchback, putting it upon the ground that the constitution had not simply devolved the duties of lieutenant governor, but had thrown the office upon him, and therefore his tenure as lieutenant governor no longer depended upon his tenure as senator of the State. If these facts are not familiar to my friend from Kentucky, I can refresh him by reference to the documents.

Mr. STEVENSON. I thank the Senator for his kindness, but I am exceedingly familiar with Pinchback's case. [Laughter.] I sincerely trust that we have done with Pinchback and that the Senate is about to have a Louisiana Senator—regularly and legally chosen—a Senator of pure gold, not Pinchback. Will the Senator from Indiana allow me to ask him just here which he thinks was the true construction in the case cited by him, the Democratic or the Republican construction, as to Pinchback's tenure of office? I should like to hear his answer.

Mr. MORTON. I will answer my friend. I think the Republican construction there was right, as it generally is [laughter], because it proceeded expressly upon the ground that the constitution of Louisiana had not simply devolved the duties of the lieutenant governor upon the president of the senate, but had in express terms made him lieutenant governor, and after that he was lieutenant governor without reference to the fact that he had ceased to be a member of the senate.

Mr. STEVENSON. If that construction was right in the case cited in Louisiana, why should not the same construction prevail now? The attempted distinction between devolving on the lieutenant governor the duties of the office and investing him with the office in the event of death or resignation is more specious than solid. Besides, the President pro tempore of the Senate, on the death of the President and Vice President, becomes President, and so remains until the election provided for by the act takes place. I insist, therefore, that the Pinch-

back case is directly against the construction contended for by the Senator from Indiana.

Mr. EDMUNDS. May I ask the Senator a question?

Mr. STEVENSON. If the Senator will allow me to continue for a moment the line of thought I am now on, I will hear and answer his question with pleasure. As to the citation of any opinion of the supreme court of Louisiana in the time of the oppression and wrong and revolution by the Kellogg government, I regard it of no judicial force whatever. If right in the instance alluded to, it was by accident. The judges were mere puppets and instruments of the Kellogg and Durell usurpation—the quasi judicial apologists for fraud and usurpation. In support of this statement I have only to refer to a judicial decision of the Supreme Court of the United States, where a railroad sale was set aside, in an elaborate opinion by Mr. Justice Strong, for fraud and perfidy committed by a man who was one of the judges of the supreme court of Louisiana at the period alluded to.

Mr. President, all that I desire is to ascertain and adopt the true construction of this clause of the Constitution as understood by its framers, irrespective of party. I will hear from the Senator from Vermont the question he desires to propound.

Mr. EDMUNDS. The Senator says, referring to the constitution of Louisiana, that that is precisely what he contends about this provision. I was about to ask him if his attention had been drawn to the difference in language between the two constitutions?

Mr. STEVENSON. No, sir. I did not refer to the constitution of Louisiana. The Senator from Indiana [Mr. Morton] interposed the construction of the constitution of Louisiana in the Pinchback case, which I did not refer to as an authority and which I had not recently examined.

But, Mr. President, the implication arising from the law of 1792, already referred to, which makes the President pro tempore of the Senate in certain contingencies President of the United States, is strong presumptive evidence that the Congress who passed it regarded the office of President pro tempore of the Senate a fixed and continuing one. At a later period, in 1861, Senator Collamer construed this clause in the same way. Hear him:

"With these views, I have prepared the resolution declaring that the President pro tempore of the Senate elected in the absence of the Vice President shall, while a Senator, remain President pro tempore, and officiate from time to time whenever the Vice President is absent, until another is elected. I think that is the true exposition of the Constitution, necessarily implied by the law that I have referred to, and the only practicable method of getting along so as to avoid going without a President pro tempore in vacation, and having constant elections and reelections every time the Vice President goes out and in."

Mr. EDMUNDS. What did the Senate do about the proposition of my predecessor? They did not agree to it at all.

Mr. STEVENSON. The resolution was not acted on. I am, however, citing the opinion of an eminent judge and a good lawyer from Vermont in support of my construction and against that of the committee. I refer to the legal opinion of so eminent a jurist as Hon. James A. Bayard for the same purpose. There was no dissent to the opinions of these distinguished gentlemen on the construction of this clause of the Constitution, and their construction was opposed to that of the committee. Both Judge Collamer and Mr. Bayard agreed that the office of President pro tempore was a continuing one. They differed only as to the point of time when the duration of the office ceased.

Now, Mr. President, I come to another fact which has had some influence upon my mind. I observe, in the past usages of the Senate for a period of 70 years, that toward the close of every session of the Senate the Vice President would notify this body that on a certain day named he would vacate the chair, and thereupon the Senate proceeded to elect a Presdent pro tempore. If the Senate could elect at any time, this would seem to have been unnecessary. Why? I will tell you. Because the Senate believed that the Constitution intended that the office of President pro tempore was a continuing one, and provided against any hiatus or interregnum in the Government of the United States. They intended that in the event of the death of the President and Vice President, the President pro tempore of the Senate should be a continuing officer. Such has been the practice, such has been the law, and such should be the construction, so invariably adhered to for so many years.

No Senator respects more than I do the present Presiding Officer of the Senate; I believe him competent and impartial. When I heard of the death

of the Vice President I had not supposed that the question would ever be raised that Senator Ferry was not the continuing Presiding Officer of the Senate, and would continue so long as his term of Senator continued. Had the President died before Congress convened, I had as little doubt that Senator would have been President of the United States. If so, how can it be that the Senate of the United States could have possessed any power to have displaced him? And yet, if the construction now insisted upon be the correct one, the Senate would possess that power, and the President pro tempore of the Senate, after being invested with the office of President of the United States, might have been displaced by the Senate.

Mr. MORTON. Will my friend allow me a moment?

Mr. STEVENSON. Certainly.

Mr. MORTON. I beg to call the attention of my friend to the fact that Judge Collamer's remarks do not bear out his position, and that the question he was discussing was not the question now before the Senate. Judge Collamer offered the followng resolution:

"*Resolved*, That the President pro tempore of the Senate, elected in the absence of the Vice President, holds his office, while a member of the Senate, until another is elected, and executes the duties thereof whenever the Vice President is absent."

He wanted to fix the rule so that when once a President pro tempore was elected his office should not be vacated by the Vice President coming back, but that he should continue, and when the Vice President went away again he should take the chair by virtue of the first election. He did not pretend that that was the law, but he wanted to make an order of the Senate fixing it so that they would not have to elect a new President pro tempore every time the Vice President was absent; and he said:

"The object of this resolution is to declare what I have understood to be really the law. It has been the practice of late years to understand that when a President pro tempore is elected in the absence of the Vice President, those words "elected in the absence of the Vice President" limit not only the occasion of his election, but the term and tenure of his office; and that when the particular absence of the Vice President on which occasion he was elected ceases his election ceases also."

He states what had been the understanding and what had been the law, and he thought it expedient to provide that when once a President pro tempore was elected he should continue to hold the office notwithstanding the return of the Vice President, thus rendering a new election unnecessary; but he never intimated for one moment that it was not in the power of the Senate to change the presiding officer. That is the point here.

Mr. STEVENSON. I am so often interrupted I fear I shall never get through. The Senator from Indiana insists that Judge Collamer never intimated that the Senate did not possess the power to displace the President pro tempore at pleasure. I beg the Senator's pardon. I appeal to the debate to bear me out. I now turn to it. Judge Collamer said:

"The object of this resolution is to declare what I have understood to be really the law."

If he believed, with the Senator from Indiana, that the Senate already possessed that power of removal at pleasure, why any declaratoy resolution on the subject? Especially, how could he with such an opinion offer his resolution?

Mr. MORTON. I will say to my friend that Judge Collamer intimated that he thought the President pro tempore could hold, notwithstanding the Vice President returned, and be the President pro tempore during his second absence, just as we have held that the beginning of a new session does not vacate the office of President pro tempore, but he continues to hold until his successor is chosen. But he does not intimate there that the Senate can not make a change; at least, he does not in that part of the speech the Senator read.

Mr. STEVENSON. I did not pretend to read the whole speech. I only referred to the opinion and position of Judge Collamer in support of the construction I mentioned. The Senator from Indiana would be better prepared to know what Judge Collamer's position was by reading his whole speech, instead of authoritatively insisting what his views were before reading it, and I think I can show that it is the logical sequence from what Judge Collamer did say that he utterly disbelieved in the power of the Senate to displace a President pro tempore without cause and at its own pleasure. But that the Senator from Indiana and myself may not differ, I will again refer to what Judge Collamer did say.

I quote from the debate:

"The object of this resolution is to declare what I have understood to be really the law. It has been the practice of late years to understand that when a President pro tempore is elected in the absence of the Vice President, those words, 'elected in the absence of the Vice President' limit not only the occasion of his election but the term and tenure of his office; and that when the particular absence of the Vice President on which occasion he was elected ceases, his election ceases also."

"That is done and can be done only upon one construction of the language of the Constitution. After speaking in the previous clause of the Vice President's presiding over the Senate, the Constitution provides that 'the Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President.' Observe the words. The pending question is upon their construction."

It arose in the Collamer debate as it does now. The Senator from Indiana can not misunderstand that. What, then, is the true purport of the words in the Constitution which Judge Collamer cited? Hear him: "The question arises on the construction of those words, that 'the Senate shall choose their other officers and also a President pro tempore in the absence of the Vice President.'"

He goes on to say:

"Undoubtedly the Senate must elect the President pro tempore in the absence of the Vice President. That settles the occasion of the election; but the question still remains, Does the office cease when that occasion passes away? In order to test this, I have looked into the early practice.

"It seems to me that if an election be made to last only while the Vice President is at that time absent, the election to the office must cease with the session. It is an absurdity to talk about—"

Let the Senator from Indiana listen and tell me what Judge Collamer meant. It is an absurdity even to intimate—

the absence of the Vice President when the Senate is not sitting.

Mr. MORTON. The Senator asks what Senator Collamer meant by that. Now, if the Senator from Kentucky has shown anything in this Collamer discussion of the power of the Senate to make the change, I have not heard it. It does not so far; it may further on; but it has not come yet.

Mr. STEVENSON. I do not know that anything Judge Collamer would or did say or anything I can cite would convince the Senator from Indiana; but certainly he can never doubt the opinion of Judge Collamer upon the continuance of the office of President pro tempore from one session to another in the absence of the Vice President. But let me continue the quotation from Judge Collamer's speech. He continues:

"No man can with propriety say that a member or the vice president of a body is absent when owing to the adjournment of the body he can not be present. Absence from a body implies that the body is sitting. It can not be said that a man is absent when the body itself is not present. If the Vice President chooses, he has a right to put an end to the time of holding the office by the President pro tempore by coming back and taking the chair, which it is said he may do at any day during the session. He can not come back to do that in the vacation. You deprive him of the power of coming here then. The truth is, as I view it, that the absence must be an absence from the sitting body; and the moment the body ceases its session no one can be said to be absent from it after that. It is to me a sort of paradox to talk about the Vice President being absent or any member being absent after we have adjourned. Neither the Vice President nor anybody else can be absent from the Senate when the Senate is not sitting.

"That this is not the practical construction of the Constitution (that is to say, that when a President pro tempore is appointed his office ceases with the session, as it must if it is limited to the time of the absence) is shown by the uniform practice of the Senate for the last 70 years. The practice has been to make an election near the close of the session, and the Vice President retires for the purpose of allowing a President pro tempore to be elected. What for? That the office may continue in vacation, and, with two exceptions, the uniform practice has been, as appears by the journals, that when the next session commences, if the Vice President is not here, the President pro tempore takes the seat. There have been two exceptions where the Senate elected a different person. That proves nothing, because the Senate, no doubt, can elect a new one at any time.

"Again, sir, the law which provides, in accordance with the Constitution, who shall perform the duties of President of the United States in case of the death

or resignation of both the President and Vice President, declares that the President pro tempore of the Senate shall officiate; or, if there be no President pro tempore, the Speaker of the House of Representatives. It is very observable that that law necessarily implies that the Congress which passed it understood the place of President pro tempore to be a continuing office—"

That is not the rule at present—

"That, when elected, he remained in until another was elected. True, it might fall out that he might die; and so provision was made for the Speaker of the House of Representatives; but the necessary implication from the law is that the office of President pro tempore of the Senate is a continuing office. It was so understood then, and I wish it merely to be so understood now. (Congressional Globe, first session, Thirty-seventh Congress, pp. 436, 437.)

I want it put in black and white that this office is a continuing office. Yet the gentleman tells the Senate that Mr. Collamer did not believe that this was a continuing office.

Mr. MORTON. I think I have heard the reading correctly. and I ask the Senator if Mr. Collamer does not, while speaking about its being a continuing office, recognize the power of the Senate to make a change at any time?

Mr. STEVENSON. I have read what Judge Collamer said, and the Senate comprehends it. I continue the quotation.

He said, in reply to Mr. Bayard:

"But, to my mind, the gentleman's argument is what we lawyers call the petitio principii. He assumes, to begin with, that the limitation of the time and term of the office is the same as the occasion of appointment. The Constitution provides that the Senate may appoint a President pro tempore in the absence of the Vice President. Now, the Senator assumes that he ceases to be President pro tempore when the Vice President comes back."

That was what Mr. Bayard insisted upon and what Mr. Collamer denied—the latter urging that the term of the President pro tempore continued on the death or absence of the Vice President during his entire term as Senator, covering the entire term of the office.

Mr. EDMUNDS. May I ask the Senator a question?

Mr. STEVENSON. Certainly.

Mr. EDMUNDS. I would like to ask the Senator whether the office of a judge of one of the United States courts is not a continuing office, and yet whether that office may not be changed? not at the pleasure of the President, to be sure. But take another case, which is more to the point; take any one of the thousands of internal-revenue officers. The office continues all the time, but at the pleasure of the President of the United States, with that of the Senate; I will say, together. It may be without, but I will pass that question. The person who occupies the office may be changed every week if we like; the office continues; but the right of a particular person to hold it is quite a different thing, I submit to my friend.

Mr. STEVENSON. My opinion is that this Senate can no more touch the President pro tempore when he becomes President than it could displace President Grant; and I utterly repudiate the statement of the honorable Senator from Indiana, made, perhaps, in the absence of the Senator from Vermont. that after the President pro tempore becomes President of the United States he can still preside over the Senate; that the Senate can still remove him. No, sir; the absurd consequences to which the proposed construction of the committee might and does lead seems to me to be an unanswerable argument against its correctness.

I think it is a matter of the highest moment that the Senate should adopt some uniform construction of this clause and act under it. This report utterly repudiates the construction and practice which have prevailed for 70 years. I think it a wise practice and the correct one I shall regret to see a new usage prevail. Still, if the majority have determined on it, like other innovations of recent years, I acquiesce.

I can see possible mischief and danger in the new construction; none has ever occurred during the old usage. I venerate this Constitution of our fathers, and I desire it to stand. I want all its guards of protection and of public and individual liberty of defense to remain unimpaired. It has been assailed and violated and its effective power almost paralyzed amid the fires and blood of civil revolution. But that has passed away.

I devoutly thank God that a soberer and a steadier feeling in the popular heart is being aroused to guard it from further violation. The people are beginning to feel that there is no power above the Constitution and no protection outside of it. It is the only ark of their political and social safety.

The PRESIDING OFFICER (Mr. Oglesby in the chair). The question is on the motion of the Senator from Ohio [Mr. Thurman] to indefinitely postpone the third resolution.

Mr. MORTON. I wish to say one word on the particular character of the motion. An indefinite postponement of this resolution would be a declaration that the doctrine of it is not recognized by the Senate, or at least that there is a doubt about it. This resolution being now before the Senate, and growing up out of the inquiry submitted to the Committee on Privileges and Elections, in my opinion it ought to be decided. We have decided two other points, and those decisions will be quoted as precedents hereafter, and I think it is important now that we should pass fairly and squarely upon this resolution.

Mr. EDMUNDS. No dodging. Do not let us have any evasion about it now.

Mr. MORTON. Let us have no evasion nor leave any doubt about it.

Mr. THURMAN. Mr. President, I think I should not have risen again upon this question but for that word "evasion." What "evasion" is there in indefinitely postponing a resolution when there is no case before the Senate giving rise to any such resolution and requiring us to pass it? We have passed two resolutions very properly, because the case had arisen; but as to this resolution there is no case before the Senate making it necessary to express any opinion upon it one way or the other.

Mr. EDMUNDS. May I ask the Senator how a case arises under the first and second resolutions any more than under this one?

Mr. THURMAN. Because a question had been made in respect to the right of the President pro tempore of the Senate to take the chair at this session. The question was made and submitted to the committee, and it was very proper that we should know whether the officer who is presiding over us, or he who assumed to be an officer, had authority so to preside.

Mr. EDMUNDS. But my friend has forgotten that since the introduction of the original resolution upon the subject the Senate by a unanimous vote declared, after rejecting an amendment which was offered to a resolution—

"That Mr. Thomas W. Ferry, a Senator from the State of Michigan, be the President of the Senate until January 7, 1876, and until a fresh appointment shall be made."

So that no more question existed yesterday respecting the right of the Senator from Michigan to exercise the duties of President pro tempore than there can exist respecting the right of my friend and mine to exercise our duties to-day.

Mr. THURMAN. I think if I were to go into the history of this question it would be seen that there is a very material difference. The Senator from Vermont introduced a resolution to go into an election of President pro tempore on the 7th day of January. I think that was the first movement. That I suggested should be referred to the Committee on Privileges and Elections. It was so referred ultimately. After that, and before the recess took place, the Senator from Vermont, out of abundant caution, it seems, introduced another resolution, that the Senator from Michigan should continue to be President of the Senate until another election, or somethnig of that kind; and it was passed to gratify him, I believe, for I am quite sure some of the Senators thought it was wholly unnecessary, as, for instance the chairman of the Committee on Privileges and Elections, who declared that he considered it wholly unnecessary. Yet, if any Senator had any doubts on that subject, there seemed to be no objection to the resolution being passed, and it was passed without any debate or discussion whatsoever. I do not think that alters the case. Now, we have decided that the Senator from Michigan continued to be President pro tempore of the Senate notwithstanding the session at which he was chosen had expired. We have settled that question. We have settled the question also that the death of the Vice President did not put an end to the duration of the office of the President pro tempore. Those are all the questions we need settle in order to affirm the right of the President pro tempore to hold his office; but how long he is entitled to hold it is another question, and can not come up properly before the Senate unless a motion be made to go into another election. That is the point which I make. It is very easy to bring this question before the Senate. If the Senator from Vermont desires it, he can very easily bring it before the Senate by a resolution to go into an election. Then we shall be compelled to decide the question; but until that be done, whatever we may say now is deciding the question before the case arises.

This is my reason for moving to indefinitely postpone the third resolution. I think it is a good and sufficient reason. I have no desire to evade this question. I am ready to vote upon it. I said the day before yesterday that I was in some doubt about it. I can not say that I am entirely free from doubt now. I

am willing to confess that my impression was, without having examined the question, in favor of the report of the committee; but subsequent reflection, a more critical examination of the Constitution, and the arguments that have been adduced by those who have spoken against the report, have changed my opinion. I think that the weight of argument is against the power of the Senate to make the change. And although this matter has been argued already, perhaps as long as the Senate desires to hear argument upon it, I venture to trespass upon the attention of the Senate for a few moments while I very briefly state the reasons that bring me to this conclusion.

In doing so I may notice another question that has been mooted here, although it is wholly outside of the question before the Senate, or at least there is no necessity for deciding it, but upon which my views are perfectly clear; and that is, what would be the status of the President pro tempore of the Senate if the duties of the presidential office should devolve upon him under the law of 1792? Upon that question I do not really see how there can be any two opinions. I think it is as clear as anything can be, that if such an event were to take place and he were to accept the discharge of the duties of President of the United States, he would cease to be a Senator. I can not conceive anything more incongruous, more opposite to the genius and spirit and provisions of the Constitution, which separate the departments of the Government into executive, legislative, and judicial, than to suppose a man could at one and the same time exercise the functions of President of the United States and be the President of the Senate of the United States, entitled to all the rights and privileges of a Senator. That would be vesting in one and the same individual powers wholly different and wholly inconsistent with each other, legislative powers as a Senator, presiding powers as the President of the Senate, and executive powers as the Executive of the United States.

It is against the rules of this body to allude to an opinion of the President of the United States unless it has been officially communicated to us; or at least it is against the rules of this body to say what the President will or will not do in regard to a matter of legislation before us upon which he has not officially expressed an opinion. Why so? Because the executive power should not be felt in this Senate to influence the votes of its members. The same rule obtains in the other House. And yet there are some Senators who seem to suppose that the very man clothed with the office of President can come into the Senate, preside over its deliberations, take part in its debates, say what he will do and what he will not do in his executive character. I can not conceive of anything more inconsistent than that. No, sir; if the duties of the office devolve upon the President pro tempore of the Senate and be sees fit to accept them, then he ceases to be a Senator. If he does not cease to be a Senator, one of two things must happen: Either that he can at one and the same time discharge legislative functions as a Senator, and be the supreme Executive of the United States, or if he can not discharge his legislative functions as a Senator, then his State is shorn of one-half of its representation upon this floor. That is the effect of it. You must say that he can come here and act as Senator, take part in our debates, vote on the question of passing a bill over his own veto, preside over our deliberations, influence us by his opinion as the Executive of the Nation, or you must say that he can not do that; he must leave this Chamber; he must take no part in its deliberations. If you say at the same time that he continues to be a Senator, then by an act of the Congress of the United States you have deprived his State of one of its Senators on this floor. This view will not bear examination at all.

Mr. CONKLING. May I ask the Senator from Ohio a question?

Mr. THURMAN. Certainly.

Mr. CONKLING. The act of Congress which is under discussion, like the Constitution on which it is founded, if it is founded on the Constitution, provides not only for the death and removal of the President and Vice President, but for the inability of both those officers to act. Now I beg to put to the Senator from Ohio this question: Suppose the acting President, the Vice President who has come to be, were ill for a time, or insane for a time, which, I take it, would be one of the cases of inability here, and the President of the Senate pro tempore should enter upon the discharge of the duties of President and continue and complete that discharge in one week, and the President, himself, resumes his health and the duties of his office, does the Senator from Ohio say that that week of service would have put an end to the tenure of office of the Senator?

Mr. THURMAN. If the Senator had not interrupted me, I should have noticed that.

Mr. CONKLING. I did not mean to interrupt my friend, but I am seeking light, and as I have interrupted him, if he will pardon me one moment, suppose——

Mr. THURMAN. I heard all the arguments the Senator can make on this question 30 years ago in this Chamber.

Mr. CONKLING. I did not know the Senator was here 30 years ago. Had I known that, my respect for venerable men would have prevented me from interrupting him. [Laughter.]

Mr. THURMAN. I thank the Senator for his respect, and I will modify my remark by saying that it was 35 years ago.

Mr. CONKLING. Thirty-five years ago! The Senator's age is as great as his discretion. But now, if he will pardon me, does he mean to tell us, that, if these duties had been devolved upon the Chief Justice of the United States and he should have discharged them for a week during the inability of the President, he would cease to be Chief Justice by so doing? I do not know that he is not right; but I am seeking, in genuine good faith, light on the subject.

Mr. THURMAN. Undoubtedly so; I did not intend to be discourteous to the Senator when I told him that he had interrupted me by asking a question which I would have considered, although this whole debate on this question is really aside from the resolution before us; and I should not have said anything about it but that I did not wish to sit in silence and hear opinions such as those expressed by the Senator from Indiana on this question without entering my dissent. I do say, in answer to the Senator from New York, that a man can not be a Senator of the United States and at the same time discharge the duties of President of the United States one minute; he can not be Chief Justice of the United States and discharge the duties of President one minute, consistently with the Constitution of the United States. That is what I mean to say.

I said that 35 years ago I heard this question discussed—discussed by great men—and discussed in the Senate of the United States. I was not in the Senate. I was too young, or the people had not discovered my merits then. [Laughter.] It was on the occasion of the death of Gen. Harrison, and the question was whether Mr. Tyler had become President of the United States. When a motion was made in the Senate to appoint a committee—the usual motion on the commencement of the session—"to wait upon the President of the United States, and inform him that both Houses of Congress had assembled, and were ready to receive any communication that he might be pleased to make," a Senator from Ohio moved to amend instead of saying "the President of the United States" by saying "the Vice President of the United States acting as President." That gave rise to a very interesting discussion; and the result of that discussion was, I believe, a vote, by a large majority, to retain the resolution in its original form, upon the ground that upon the death of the President the Vice President became actually President of the United States. It was argued in support of the amendment that there was a distinction between the case of the death of the President and a temporary disability, and that it could not be said that the Vice President became President of the United States where the actual President was only under temporary disability, because that would be to have two Presidents of the United States at one and the same time. It is precisely the same argument that the Senator from New York now suggests. It was said then that this clause is regard to the powers and duties devolving on the Vice President is precisely the same in respect to death or to inability to serve. Let me turn to that clause:

"In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."

They are all put in the same clause, and the language is "what officer shall then act as President." I am speaking now from recollection, for I do not think I have read that debate for many years; but it made a great impression on my young mind at that time. The opinion expressed by leading Senators who took part in that debate was that in the case of death it is plain, and in the case of removal from office it is plain, and in the case of resignation it is plain; all those cases put an end to the official character of the President; and it was only in case of his inability to serve (it might be from insanity, or from imprisonment, or from some temporary cause—sickness a Senator suggests, and that might well be) that there could be any question. The weight

of opinion, as I recollect it, expressed then was that in such a case of inability, as in case of captivity and imprisonment—if for instance, Mr. Lincoln had been captured and imprisoned by the Confederates during the late Civil War, his powers would have been in abeyance during that captivity, and the Vice President for the time being would have been the President of the United States; and no order given by Mr. Lincoln from his dungeon in a Southern State, if he had been in one, or in some fortress there, could be obeyed as the order of the President of the United States; but the powers of the real President being in abeyance by reason of imprisonment or inability to discharge his duties, the Vice President for the time being would have been the President of the United States.

Mr. MORTON. I want to call the attention of my friend from Ohio, because I am interested in this part of the discussion; although it is not involved in the passage of this resolution; and as he has brought it here——

Mr. THURMAN. I did not.

Mr. MORTON. Or rather, he brought it here before. His argument is that the President pro tempore of the Senate in the case of the death of the President of the United States would become the President of the United States in fact and in law. Now, I dissent from that. The argument in the case of the Vice President, where the President should die or become disabled, is not in point. The Constitution makes the difference:

"In case of removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same—" that is, the office—

"shall devolve on the Vice President."

Mr. THURMAN. O no! the last antecedent is "duties"—"powers and duties."

Mr. CONKLING. The Senator supposes now that the office itself devolved and not the powers and duties.

Mr. MORTON. I will read it just as it is.

Mr. THURMAN. "To discharge the powers and duties of the said office."

Mr. MORTON. "The same"—that is, I take it, the office. That is what the Senator himself argues.

Mr. EDMUNDS. That is the grammatical argument of the Senator.

Mr. MORTON. I wish to point out the difference in the language of the Constitution:

"The same shall devolve on the Vice President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President."

That is what it is. We have very frequent illustrations of this kind. I believe the law provides that when a Secretary of one of the departments shall be disabled or absent an Assistant Secretary, or some other officer, shall act as Secretary. He does not cease to be assistant, but for the time being, under the law, he performs the duties of the chief office and acts in that capacity. For example, the charter of a city provides that when the mayor is sick or otherwise disabled or absent, the first justice of the peace in the city may act as mayor. The justice does not become mayor, but the duties of the office are temporarily devolved upon him, and he acts in that capacity. The other man does not cease to be mayor. In the absence of the Secretary of the Treasury, the assistant performs his duties, but the one does not cease to be Secretary of the Treasury nor does the other become Secretary; and in this case the Constitution says that Congress may provide what officer shall act as President. That may be temporarily or it may not be.

Mr. THURMAN. I do not find much light on this question from the illustration of mayors of cities and corporate villages in the State of Indiana or the State of Ohio. It seems to me that it is a question which depends on the Constitution of the United States, and is quite irrespective of any of those municipal laws to which the Senator has referred. I did not rise, however, to argue that question, but only to say that I, for one, dissent from the views expressed by the Senator from Indiana in the first remarks which he submitted this morning on this question. I think when the office devolves on the President pro tempore he ceases to be Senator, becomes President, and holds the office of President until the expiration of the term or until another President is elected. I may be wrong about it; I only state my opinion. That is my judgment, because I can not in any way reconcile it to my mind that a man can at one and the same time discharge the duties of President of the United States and be a Senator in Congress, entitled to take a seat on this floor and to participate in

our deliberations with all the powers of a Senator; nor can I reconcile it to myself to say that any act of Congress can deprive a State of one-half of its representation on this floor by making a Senator President of the United States, and at the same time leaving him a Senator in name but without power to act as a Senator. That is all that I desire to say upon that branch of the subject.

Upon the question that is immediately before the Senate, and as to which I have said that I was not entirely clear, but that the impression of my mind was in favor of the views of the minority of the committee, I wish to say a very few words indeed.

"The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States."

I wish the attention of the Senator from Indiana for one moment. The Senator says that the power conferred in this clause is precisely the same in respect to the President of the Senate that it is in respect to "the other officers," and that if it is competent for the Senate to remove its Secretary, or its Chief Clerk, or its Sergeant at Arms, it follows necessarily that it has a like power to remove the President pro tempore. I submit to him that he is entirely mistaken in that. There is not one word in this clause that by any implication whatever fixes the duration of the office of any officer of the Senate except the President pro tempore. There is not one word in the clause which, either expressly or by any implication, fixes the term of office of the Secretary of the Senate, of the Chief Clerk of the Senate, of the Sergeant at Arms, or of any of those officers who are strictly officers of the Senate. But when you come to the President pro tempore there are most pregnant words that do intimate, that do raise a fair implication, if they do not express it in fact, that he is to hold during the entire absence of the Vice President, and, if that absence be caused by death, as in the case now before us, that then he must continue to hold as long as he is a member of the body, unless, in the meantime, another Vice President has been chosen. Let us see how this matter is:

"The Vice President of the United States shall be President of the Senate, but shall have no vote, etc.

"The Senate shall choose their other officers."

Why was the clause "the Senate shall choose their other officers" put in at all? The reason of it is very obvious. You will find a like provision in regard to the House of Representatives. It was to give each body the absolute power to choose its own officers. Just for the same reason that each House is made the sole judge of the election, returns, and qualifications of its own members, so the choice of its own immediate servants is vested in each House, and it is to prevent the choice of officers of the Senate, or officers of the House being made a subject matter of legislation, being governed by law, or being conferred upon any executive authority. It is for that reason alone that the clause is put in here that "the Senate shall choose their other officers." Then the Constitution goes on and says: "And also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States."

If the Senator from Indiana is right, why was not this clause condensed so as to say "the Senate shall choose their other officers, and when necessary a President pro tempore?" Why was it not put in those few words? Where was the necessity of putting in words that import a term for which that President is to hold his office? If the Senator from Indiana and the majority of the committee are correct, the whole object would have been accomplished by saying: "The Senate shall choose their other officers, and also a President pro tempore when necessary." That would have left him in the power of the Senate. But, instead of saying in those few words that the Senate should have the power to elect a President pro tempore, they go on to say "and a President pro tempore in the absence of the Vice President." And that is not all: "Or when he shall exercise the office of President of the United States."

It does look as if the plain import of this language was that there is to be such an officer, and it is admitted he is an officer, for, if he is not, he could not become President under the act of 1792, and that act would be unconstitutional. There is to be such an officer as a President pro tempore of the Senate, and that officer is elected for an absence of the Vice President, and if that absence is to be continuous, as in the case of his becoming President of the United States upon the death, resignation, or removal from office of the President, then that Senator, thus President pro tempore, is to hold for the whole term.

That is the natural import of this language, as it seems to me upon further reflection. In view of the language of the Constitution and in view of the fact that it seems to have been the idea of the framers of the Constitution that the presiding officer of this body should have a certain independent status, a certain permanency of tenure of office, and with the strong reasons which have been given favoring this permanency of tenure, I can not bring myself ultimately to the conclusion that this is an office held durante beneplacito; that we are to turn our presiding officer out one day and put somebody else in; and that, owing to some casual change of majority or change of feeling in the Senate, we are to reverse the thing the next day and reinstate the old officer. I know that there is very little to be gained by supposing extreme cases. There is very little to be gained by supposing that the Senate would do so improper a thing; and yet it might be done in times of high party excitement.

Then, I think, Mr. President, that there is great force in what was said by the Senator from Florida [Mr. Jones]. If you say that the President pro tempore can be changed at the will of the Senate, and the House of Representatives should take the opposite view of it, and the office of President of the United States should devolve on the President of the Senate, you might have a conflict between the two Houses as to who was the Chief Executive Magistrate. If, for instance, we were to change our President pro tempore, elect some one else in his stead, and (this not being a matter of the special privileges of the Senate, upon which our judgment is conclusive—for upon it depends who shall be President of the United States if the House of Representatives should take the opposite view and say, "You have improperly elected a man; you have violated the Constitution by electing a man when there was no vacancy and when you had no power to change your presiding officer," we can see that there would be a conflict immediately between the two Houses. That may be an extreme case, too—that is to say, a case not very likely to occur—and yet it is a case so likely to occur that it has been thought necessary to provide by law for the event of death of both the President and Vice President of the United States, and it is provided for in the Constitution also. The Constitution contemplates that both President and Vice President may die or their offices become vacant, and it requires Congress to provide for such a contingency, and Congress has provided for it; so that it is not reasoning from extreme cases or improbable hypotheses to say such a case may arise; and, seeing that it may arise, it is possible there may be this conflict between the two Houses of the opinion advocated by the majority of the committee shall prevail. The other opinion—that which makes the office of President pro tempore permanent as long as the Vice President is absent—removes any possibility of danger of a conflict.

Mr. ALCORN. Mr. President, I have very few words to offer the Senate, but I have some thoughts which have occurred to me during the progress of this discussion which I feel disposed to present. The question is whether an officer chosen by this body pro tempore, for the time, is an officer for all time. I find no difficulty in coming to a conclusion upon this point; and it is for the reason that I find no difficulty in reaching a conclusion upon several points suggested that I desire now to offer what I have to say.

If the President pro tempore of this body was called to discharge the duties of President of the United States by reason of the death of the President today, at this moment, he would at once have gone beyond the reach of this body, to discharge duties devolving upon him under the law; his responsibility to the Senate would have been enlarged; he would have become at once responsible to the people of the United States, who have provided by law that this officer, upon a certain contingency, shall assume certain other duties and discharge a certain other office. He could then only be reached through the avenue and under the law that had been provided for reaching the President of the United States in case he failed to discharge his duties faithfully. He could not be removed by this body, for the good reason that he was no longer responsible to this body; but, under the operation of the Constitution and the law, he would have succeeded to the discharge of higher and more important duties; he would have succeeded to the discharge of the functions of a separate and independent branch of the Government; he would be no longer dependent on the legislative department of the Government or on either branch of the legislative department of the Government, but he would have become responsible to the people of this nation, and could only be removed in the mode pointed out by the Constitution and the law. What then would be the duty of the

Senate? Being without a presiding officer, to elect its President pro tempore, who holds just as long as this body sees proper to continue him in office, and if the President pro tempore who has now succeeded to the office of President of the United States should die—a contingency not likely to happen, but which might happen nevertheless—where then would come, if there were no other provisions of law than these, the President of the United States? The President pro tempore would simply succeed to the position again—I mean in the absence of other legislation on the subject.

In Mississippi, I remember once, under a precisely similar clause in the constitution of that State, our governor, Gen. Quitman, resigned the office of governor. Judge John I. Glihon, a very distinguished lawyer indeed, a man who had presided with great distinction as judge, being at that time president of the senate, at once made his obeisance to that body and assumed the discharge of the duties of governor of the State, and the senate immediately proceeded to elect its president pro tempore, who continued to preside for the residue of the term.

Recently in Mississippi, under the constitution of the State adopted since the reconstruction acts, it was provided that 30 days after the election of the governor and State officers under the new constitution, all the offices of the State should be vacated and that the governor should appoint, by and with the advice of the senate, the various officers provided by law. By and with the advice and consent of the senate, mark you, he was to appoint the various officers to discharge their duties in the State. There were some 3,000 of these. The governor went forward to appoint, and he appointed, among others, members of the board of supervisors in a certain county. They were by the senate confirmed. The constitution provided that this class of officers should hold their offices until they should be filled by election. The governor undertook to remove a board of supervisors that he had appointed and that had been confirmed by the senate. This teaches now a branch of the subject that is under discussion here to-day. I desire to offer to the Senate an opinion of the supreme court of the State of Mississippi touching the power of the governor to remove an officer provided for in the constitution, and an officer that had been appointed by him and confirmed by the senate of the State—a strong case—no definite time being fixed when the terms of this class of officers should expire, but simply that they should expire at the will of the legislature, when the legislature should provide for an election. I will send the book to the Secretary and ask that he read what the supreme court of a State say upon that subject, and they take a rather comprehensive view, as the Senate will observe.

The Chief Clerk read as follows:

"It is contended by counsel for appellees that the term of office for which the appellants, Newson, Mason, and Acree, were appointed was not fixed and definite, and, therefore, the power of removal was incident to that of appointment. It was once a vexed question whether the President of the United States had the right and power in any case to remove an incumbent from office, but it was well settled that, prior to the tenure of office act, where no tenure of office was prescribed by the Constitution or laws of the United States, it was held at the pleasure of the appointing power, and that the power of removal, in such cases, was incident to that of appointment; that the President, anterior to that act, possessed the power of removing all officers, civil and military, except those in the judicial department, or where Congress had given some other duration to their office. In the absence of all constitutional provision, or statutory regulation, it would seem to be a sound and necessary rule to regard the power of removal as incident to the power of appointment. This power of removal from office was a subject of much dispute, and upon which a great diversity of opinion was entertained in the early history of the Federal Government. This, however, related to the power of the President to remove officers appointed with the concurrence of the Senate, and the great question was, whether the removal was to be by the President alone, or with the concurrence of the Senate—both constituting the appointing power. No one denied the power of the President and Senate jointly to remove where the tenure of office was not fixed by the Constitution or act of Congress. This was a full recognition of the principle that the power of removal was incident to the power of appointment in all such cases. But it was very early adopted as the practical construction of the Constitution that this power was vested in the President alone. And this doctrine has been recognized by the Supreme Court of the United States in the case of ex parte Hennen (13 Peters, 225) and

acquiesced in by every department of the Government from that time down to the administration of President Johnson, when the tenure of office act was passed by Congress. (44 Mississippi Reports, pp. 360, 361.)"

Mr. ALCORN. I have nothing further to say upon this point. It occurs to me that there can be no question but that the power to appoint includes the power to remove, there being no period fixed at which the occupant is to hold the office. The Senator from Ohio asked why the Constitution did not say "for the day," why it was not more definite? The framers of the Constitution at the time evidently had not the contingency of the death of the President of the United States in their mind. I might ask why did not the Constitution of the United States say that this President pro tempore should preside in the absense of the Vice President of the United States; should discharge the duties in case of his absence? Why did not the Constitution go on and say "and in cases he shall become President he shall continue to discharge the duties during the term for which the Vice President was elected?" Why did not the Constitution say that? Simply because the framers of the Constitution did not desire to confer any such power, any such independent authority, upon a mere President pro tempore of this body. The framers of the Constitution gave authority to the Senate to appoint their own President pro tempore and the Constitution has authorized Congress to provide that in a certain contingency he may inherit—if I may be allowed the expression—the Presidency, or, in other words, that the duties of President may devolve upon him. That was doubtless meant to provide for the vacation of the Senate, when that body was not in its place, when the President might die at a time when there would be no one at the capital to take charge of and discharge the duties of the office of President. It was to avoid the possibility of an interregnum; it was to avoid the possibility of that confusion which would arise in case doubt were left upon that subject; and if that contingency should occur and the President pro tempore should go forward to discharge the duties devolved upon him under the law and the Constitution, who is it that would deny the authority of this body, coming together, to choose its presiding officer for the time being? What other officer could they choose except a President pro tempore?

The PRESIDING OFFICER (Mr. Allison in the chair). The question is on the indefinite postponement of the third resolution.

Mr. MORTON. I ask for the yeas and nays.

Mr. BOGY. Let it be reported.

The Chief Clerk read the resolution, as follows:

"3. *Resolved*, That the office of President pro tempore of the Senate is held at the pleasure of the Senate."

The PRESIDING OFFICER. The question is on the indefinite postponement of this resolution, on which the Senator from Indiana calls for the yeas and nays.

The yeas and nays were ordered.

Mr. ENGLISH. On this question I am paired with the Senator from Arkansas [Mr. Dorsey]. If he were here he would vote "nay" and I should vote "yea" on this motion.

Mr. JONES of Florida. On this question I am paired with the Senator from Illinois [Mr. Logan]. If he were present he would vote "nay" and I should vote "yea" on this motion.

The question being taken by yeas and nays, resulted—yeas 18, nays 36.

So the motion was not agreed to.

The PRESIDING OFFICER. The question recurs on the adoption of the resolution.

Mr. EDMUNDS. Let us have the yeas and nays.

The yeas and nays were ordered.

Mr. WHYTE. Mr. President, I voted for the indefinite postponement because I do not think any practical question is now pending before the Senate. I had intended to vote for the resolution of the committee, because, to a certain extent, I believe it enunciates the true principle in regard to the power of the Senate over the President pro tempore; and had it not been for the remarks which fell from the Senator from Vermont immediately opposite me [Mr. Edmunds] in regard to the extension of that power, I should still be willing to vote for the resolution as it came from the committee; but I desire to offer an amendment to make it clearer than it seems to me now to be, and if the amendment be adopted I shall then with pleasure vote for the resolution; if it be not, I shall vote against it. The amendment is to add to the resolution these words:

"Until the happening of the contingency provided for in the ninth section of the act of Congress approved March 1, 1792, when he is authorized to act as President of the United States."

Mr. MORTON. I should have no objection to that amendment if it did not carry with it an implication that perhaps the Senator from Maryland does not intend. I think as it is now framed it would carry the implication that, after the contingency had happened, the President pro tempore could not then be changed by the Senate. That may be the law, but I am not prepared now to say that it is; and if my friend will just frame his proposition so as to state that it only applies until that time, leaving the question open after that time, I shall be willing to accept it so far as I am concerned.

Mr. EDMUNDS. But the effect of that would be to leave the original resolution in substance just as it stands now. The present resolution declares in general terms, without looking forward to a question which may arise, that this officer holds his office at the pleasure of the Senate. I think that is perfectly consistent with the idea that by a certain event he may cease to be an officer of the Senate and become something else, as some gentlemen maintain. This resolution stands just as well then; so that there is no occasion, in my opinion, for this addition proposed by the Senator from Maryland, because I do not think this resolution raises the question. If the argument in favor of the future is sound that has been advanced (and whether it is sound or not it is not now necessary to go into a discussion of), certainly we all ought to be able to agree. I think, now, as the Senator from Maryland I believe expresses his satisfaction with it, that, taking the resolution in its general and parliamentary sense, speaking not of future contingencies but of the daily exercise of our functions as a Senate, we can all affirm this resolution as it stands. I should hope, therefore, that the amendment would not be pressed.

Mr. WHYTE. I have but a word to say, and am very reluctant even to trespass on the time of the Senate to say that word. The very difficulty which we would all like to avoid; that is, of any trouble arising after the contingency contemplated by the act of 1792 shall take place, will not be avoided by the expression of opinion limited as it is limited in the resolution of the Committee on Privileges and Elections. I meant the very thing which the Senator from Indiana referred to. I meant to say if the Senate is to express an opinion—and I wish to concur in that opinion—that after the duties of President of the United States had devolved on the President pro tempore of the Senate we had no power or control over him then at all. The law passed in 1792, to which the Senate of that day gave its concurrence, divested us of power and control over him pending the period that he was exercising and discharging the functions of President of the United States. Therefore, unless the Senate means merely to limit its power over the President pro tempore until the period when by operation of law he assumes higher and more important functions than those of Senator, I shall certainly not vote for the resolution.

Mr. ALCORN. I shall not support the amendment, for the reason that it is a mere obiter dictum; and if we pass it here and the contemplated contingency should arise, while my mind is very clear to-day, still it might be that after having other lights on the subject and hearing from those who have studied the subject and when I have studied it more myself than I have done, I might change my opinion. I propose simply to go so far as it is necessary to go to-day; and when the further contingency arises, as we trust it never will arise, then we will discuss that question; and I have no doubt if the President pro tempore who is now enjoying the office should be then enjoying the office that he would be very patient in listening to it, and would not care very much how long the discussion should be prolonged.

Mr. MORTON. On a second reading of the amendment offered by the Senator from Maryland I am clear that it would carry with it the implication that after the contingency had happened the President pro tempore was no longer under the control of the Senate. That may be the law, but I am not prepared to say so by my vote at this time, and I think that amendment, read hereafter when the understanding that exists here to-day shall have passed away or be not fully recorded, will carry with it that implication. I do not understand the Senator from Maryland intends that, but simply intends to except the tenure of the office after that contingency from the effect of the resolution. If he would so frame it as to make it distinct on that point, I should have no objection; but I think the resolution as it stands now does not carry with it any force or implication which would be binding after the contingency had happened. I think it is merely a declaration that now the office of President pro tempore is held at the pleasure of the Senate, and what might be the tenure of the office after that contingency had happened I do not think is embraced in the present resolution.

Mr. SAULSBURY. Mr. President, I do not think that it is necessary to adopt the amendment of the Senator from Maryland; nevertheless I shall vote for it, because I can not see what possible harm it can do. I see very well that the Senator from Maryland has had this idea suggested to him from remarks thrown out in the debate. I do not concur in the view which has been expressed, that after the duties of the office of President of the United States have been devolved on the President pro tempore of the Senate the Senate has then any control whatever over him. I think that the moment the duties of the office of President of the United States are devolved on the President pro tempore, co instanti he ceases to be a member of the Senate if he accepts the other office, and he is beyond the control or the reach of this body in any respect except through the constitutional mode of impeachment for the nonperformance or for the manner in which he discharges his duties as President of the United States. I do not think, therefore, that the amendment of the Senator from Maryland is necessary, but I can see no harm to arise from it; and, as that amendment has been suggested by reason of remarks thrown out in debate, I shall concur in the amendment by my vote. I shall vote for the resolution, however, whether it is amended or not amended.

Mr. WRIGHT. I regret very much to have to ask once more that the resolution be reported with the amendment. I wish to call the attention of the Senator from Maryland to a suggestion that I think there is in connection with his amendment, when it shall be reported.

The PRESIDING OFFICER. The resolution and amendment will be reported.

The Chief Clerk read the resolution and the amendment.

Mr. WRIGHT. I understand the original resolution as offered by the committee to assert that the office of President pro tempore of the Senate is held at the pleasure of the Senate. Now, the Senator from Maryland proposes to amend it by adding "until the contingency arises under the act of 1792." The inevitable implication from that in my mind is that he is still the President of the Senate pro tempore after this contingency arises. Now, the Senator certainly does not wish to raise that implication nor to so state. The original resolution, in other words, says that the office of President pro tempore of the Senate is at the pleasure of the Senate. He says "until a certain contingency arises." Then it is not at the pleasure of the Senate, but he is still the President pro tempore of the Senate according to the amendment. I am sure the Senator from Maryland does not intend to assert that, nor does he want to have it understood that he means that. I suggest, therefore, that the amendment is vicious. First, because, as the Senator from Indiana says, it is subject to the implication that he states, and I think it is subject to the implication that I have stated. In view of what it seems to me must be the clear sentiment of the Senate on this subject and must be the clear law, I suggest that it is better to withdraw the amendment and let us take the question simply on the resolution as offered by the committee.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Maryland.

Mr. WHYTE. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. THURMAN. Mr. President, I am very forcibly impressed by what has just been said by the Senator from Iowa, that, in view of the imperfection of human language, we ought to try to express our ideas so that there shall be no ambiguity. His argument is, that if we adopt the amendment there will be an implication that after the Presidency devolves on the President pro tempore of the Senate the power to change him shall cease; which would be an implication that he continued to be a member of this body. I think he would cease to be a member of this body; and while I quite concur with the Senator from Maryland that when the Presidency devolves upon him he can not be ousted of that by any action of the Senate whatsoever unless he were impeached. I am a little afraid that the amendment does carry the implication that he continues to be a member of this body after the Presidency has devolved upon him.

Mr. STEVENSON. The great desire I have is that we should arrive at something fixed and definite, so that everybody may understand what the real character of the appointee is. I will take this case: Suppose the President of the United States were to die to-night; I take it that the distinguished Presiding Officer of the Senate would be President; but suppose he were to die, then would the temporary President of the Senate or would the Speaker of the House be the President of the United States? If Senator Ferry were to become

to-morrow the President of the United States, and a week after that were to die, what would be the consequence? The law says that if there be no President pro tempore of the Senate the Speaker of the House shall succeed; but we in the meantime would have selected another President pro tempore. Can any Senator say at once what the construction would be, whether the President pro tempore who took Senator Ferry's place would be, in the event of his death, the President, or would the Speaker of the House be? These are matters too important, it seems to me, to go unsettled. I have no feeling on the subject whatever, except that we shall take such action as to provide for every contingency that may occur, so that the Senate itself, when it elects a President pro tempore, shall know by the law as fixed what his responsibilities are, and, in the event of his death, who will succeed him.

Mr. EDMUNDS. Mr. President, it is perfectly impossible for the Senate to settle the question that the Senator from Kentucky speaks of except by participating in the passage of a law. We can settle who our presiding officer is to be, and how long he shall be presiding officer, because the Constitution gives us that power; but when it comes to duties that are imposed upon him or upon anybody else by law, if the law is constitutional at all, we as a Senate can not determine who, or how, or in what way he shall exercise those duties that the law speaks of. Now, this resolution of the Senator from Indiana is directed to our privileges as an independent body acting for ourselves. Beyond that we can not express any opinion that is of any value except as evincing the view of the individuals who express it, and that is one reason why I am opposed to this amendment.

Mr. STEVENSON. I agree to what the honorable Senator says, but I propose, when this subject is disposed of, to offer a resolution instructing the Judiciary Committee to look into this matter, and by necessary and proper legislation to provide for every emergency which may occur. I think it is exceedingly uncertain now, and I think that the most honest minds, the ablest legal minds, may well differ as to what construction should be put upon it. I do not think we ought to leave the matter unsettled. Though it is not determined by the pending resolution, yet the Judiciary Committee, it seems to me, might by proper legislation provide for every contingency, so as to leave no hiatus in the event of the death of any of these high functionaries.

Mr. THURMAN. When the Senator from Vermont said that the third resolution now under consideration merely called upon us to exercise our independent power as a Senate in a matter with which no other body has anything to do, it is a begging of the question; for if the Constitution is correctly interpreted by the Senator from North Carolina and the Senator from Florida, then it is a question what the Constitution means, and upon that the other House has as much right to decide as the Senate. We are not clothed with any exclusive jurisdiction over the subject if, as those Senators think, the Constitution fixes the term of the office of our Presiding Officer.

But you see, Mr. President, that we are getting into a great deal of constitution making or constitution expounding here, and deciding a question that has not yet arisen in the Senate. If we are to expound the Constitution, to give the weight of the opinion of the Senate to any particular interpretation of the Constitution, it ought to be had with very great deliberation; and although I do not wish to prolong this discussion and have nothing more to say, as far as I know, I should like to consider this amendment which has been offered by the Senator from Maryland, and in order to have time to do so I move that the Senate proceed to the consideration of executive business.

Several SENATORS. No! No!

Mr. CHRISTIANCY. I agree fully with the report of the committee as far as this resolution is concerned. I think it is correct as it stands. At the same time, as to the question of the power of the Senate to elect a President pro tempore in the contingency of the death of the President of the United States after the duties of President are cast on that President pro tempore, I agree fully with the Senator from Ohio. But agreeing with him in that proposition, and that the office of President pro tempore becomes vacant, and that the senatorial office of the President pro tempore becomes vacant, I can still vote for this resolution, because with that idea when he succeeds to the duties of the Presidency there is a vacancy and we may still go on and elect a President pro tempore, so that the resolution as it now stands is correct in either view upon that point.

Mr. MCMILLAN. I understand the resolution of the Senator from Indiana, if it shall be passed, will express the opinion of the Senate upon the facts as they

now exist, nothing further; and, entertaining those views, I vote upon the question.

The PRESIDING OFFICER. The Senator from Ohio moves that the Senate proceed to the consideration of executive business.

The motion was not agreed to.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Maryland [Mr. Whyte], upon which the yeas and nays have been ordered.

The Chief Clerk proceeded to call the roll.

Mr. ENGLISH (when his name was called). I am paired with the Senator from Arkansas [Mr. Dorsey] on all propositions connected with this subject.

The result was announced—yeas 18, nays 33.

So the amendment was rejected.

The PRESIDING OFFICER. The question recurs on the adoption of the resolution, on which the yeas and nays have been ordered.

The Chief Clerk proceeded to call the roll.

Mr. MCDONALD (when Mr. Burnside's name was called). The Senator from Rhode Island [Mr. Burnside] is paired with the Senator from Delaware [Mr. Bayard].

Mr. JONES of Florida (when his name was called). I am paired with the Senator from Illinois [Mr. Logan]. He would vote in the affirmative and I in the negative, if he were here.

Mr. KELLY (when his name was called). Upon this question I am paired with the Senator from Vermont [Mr. Morrill]. If he were present he would vote for the resolution and I should vote against it.

The roll call having been concluded, the result was announced—yeas 34, nays 15.

So the resolution was agreed to.

The PRESIDING OFFICER. The next resolution will be read.

The Chief Clerk read as follows:

"4. *Resolved*, That Hon. Thomas W. Ferry, a Senator from Michigan, who was elected President pro tempore of the Senate at the last session, is now the President pro tempore by virtue of said election."

Mr. EDMUNDS. I suggest to the Senator from Indiana that he withdraw that resolution, inasmuch as in view of what we have declared the resolution as it is drawn is inconsistent with that declaration, as since his election at the last session he has been again appointed under an order of the Senate to hold until a fresh appointment should be made; and as this resolution states that his present title is on the old election and not on the new one, it seems to me to be inconsistent with the declaration we have made. Therefore I suggest that it is entirely unnecessary and had better be withdrawn.

Mr. MORTON. We have declared that Mr. Ferry continued to act by virtue of his election before the end of the last session. I suppose that the suggestion of the Senator from Vermont reaches this point, that although he was the legal President pro tempore when the resolution offered by the Senator from Vermont passed, yet technically his present term dates from that resolution.

Mr. EDMUNDS. Exactly.

Mr. MORTON. That I understand to be the Senator's point.

Mr. EDMUNDS. If he were commissioned as another officer would be, his commission would be under his present election at this session.

Mr. MORTON. I understand the Senator's point to go to this, that although he was at the time the President pro tempore holding legally, the same man being again reelected his present term dates from that last election?

Mr. EDMUNDS. Certainly, the office being held at our pleasure.

Mr. MORTON. It occurs to me that the Senator from Vermont is technically right. I know the resolution offered by him was simply intended to cover a doubt. It was not intended to affect the office.

Mr. MCMILLAN. Will the Senator from Indiana allow me to ask him a question?

Mr. MORTON. Certainly.

Mr. MCMILLAN. Would it make any difference by what election he is held? If this resolution is passed it declares the fact that the President pro tempore is such.

Mr. EDMUNDS. It declares that he holds under the old title, which is entirely inconsistent with the resolution which we have just adopted that he holds at our pleasure.

Mr. MCMILLAN. Does it so declare?

Mr. EDMUNDS. Yes; it says that by virtue of the old election he now holds, when holding by our pleasure he holds by virtue of the new election.

Mr. MCMILLAN. I should like to hear the resolution read.

The PRESIDING OFFICER. The Secretary will again report the resolution.

The resolution was read.

Mr. MORTON. I think that the resolution technically is not correct. I think that technically he holds from the election the other day and not from the election of last session, and, entertaining that view, I withdraw the resolution.

The PRESIDING OFFICER. The resolution is withdrawn.

FORTY-FOURTH CONGRESS, SECOND SESSION.

(Hon. Thomas W. Ferry continued to act as President pro tempore of the Senate through this session, the Vice President having died before the opening of the first session of this Congress.)

SPECIALLY CALLED SESSION.

Monday, March 5, 1877 (Journal, 44th Cong., 2d sess., pp. 436-437).

The Senate being called to order by the Secretary, and

The proclamation of the President of the United States convening the Senate for the transaction of business having been read,

On motion by Mr. Hamlin, and by unanimous consent,

Resolved, That the oath of office be administered by Senator Timothy O. Howe to Thomas W. Ferry, Senator-elect from the State of Michigan, and that he be, and hereby is, chosen President of the Senate pro tempore.

The oath of office prescribed by law was accordingly administered to the Hon. Thomas W. Ferry, and he thereupon assumed the chair.

FORTY-FIFTH CONGRESS, FIRST SESSION.

(The Vice President occupied the chair during the entire session.)

FORTY-FIFTH CONGRESS, SECOND SESSION.

Tuesday, February 26, 1878 (Journal, pp. 236–237).

The Vice President being absent, the Secretary called the Senate to order.

Mr. Anthony submitted the following resolution:

Resolved, That, in the absence of the Vice President, the Hon. Thomas W. Ferry be, and he is hereby, chosen President of the Senate pro tempore.

The Senate proceeded to consider the resolution; and, on motion by Mr. Bayard to amend the same by striking out all after the word "*Resolved*," and in lieu thereof inserting, "That the Senate do now proceed to choose by ballot a President pro tempore,"

It was determined in the negative, {Yeas 28 / Nays 28}

On motion by Mr. Anthony,

Those who voted in the affirmative are:

Messrs. Bailey, Bayard, Beck, Butler, Cockrell, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Eustis, Gordon, Grover, Harris, Hereford, Hill, Johnston, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Maxey, Merrimon, Morgan, Voorhees, Whyte, and Withers.

Those who voted in the negative are,

Messrs. Allison, Blaine, Booth, Bruce, Cameron of Wisconsin, Chaffee, Christiancy, Conover, Dorsey, Edmunds, Hoar, Ingalls, Jones of Nevada, Kellogg, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Paddock, Patterson, Rollins, Sargent, Saunders, Spencer, Teller, Wadleigh, and Windom.

So the amendment was not agreed to.

On motion of Mr. Wallace, to amend the resolution by striking out the name "Thomas W. Ferry" and in lieu thereof inserting "Allen G. Thurman,"

It was determined in the negative, { Yeas---------- 28 / Nays---------- 29

On motion by Mr. Anthony,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bailey, Bayard, Beck, Butler, Cockrell, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Eustis, Gordon, Grover, Harris, Hereford, Hill, Johnston, Jones of Florida, Kernan, Lamar, McCreery, McDonald, McPherson, Maxey, Merriman, Morgan, Voorhees, Whyte, and Withers.

Those who voted in the negative are,

Messrs. Allison, Blaine, Booth, Bruce, Cameron of Wisconsin, Chaffee, Christiancy, Conkling, Conover, Dorsey, Edmunds, Hoar, Ingalls, Jones of Nevada, Kellogg, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Paddock, Patterson, Rollins, Sargent, Saunders, Spencer, Teller, Wadleigh, and Windom.

So the amendment was not agreed to.

On the question to agree to the resolution,

It was determined in the affirmative.

Mr. Ferry thereupon took the chair.

Wednesday, April 17, 1878 (Journal, p. 403).

The Vice President being absent, the Secretary called the Senate to order.

Mr. Anthony submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President the Hon. Thomas W. Ferry be, and he is hereby, chosen President of the Senate pro tempore.

FORTY-FIFTH CONGRESS, THIRD SESSION.

Monday, March 3, 1879 (Journal, pp. 482–483).

AT 10 O'CLOCK A. M. (TUESDAY).

The Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, D. C., March 3, 1879.

SIR: As I shall not again occupy the chair during the present session of the Senate, please notify it of that fact, to the end that it may choose a President pro tempore.

Respectfully,

W. A. WHEELER,
Vice President.

To the SECRETARY OF THE SENATE.

Whereupon Mr. Anthony submitted the following resolution:

Resolved (the Vice President being absent), That Hon. Thomas W. Ferry, one of the Senators from the State of Michigan, be, and he hereby is, appointed President pro tempore of the Senate.

The Senate proceeded, by unanimous consent, to consider the resolution; and on motion by Mr. Bayard to amend the resolution by striking out "Thomas W. Ferry, one of the Senators from the State of Michigan," and in lieu thereof inserting "Allen G. Thurman of Ohio,"

It was determined in the negative, {Yeas 26 / Nays 28}

On motion by Mr. Bayard,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Bailey, Bayard, Beck, Butler, Cockrell, Coke, Davis of Illinois, Davis of West Virginia, Dennis, Eaton, Gordon, Grover, Harris, Hereford, Hill, Jones of Florida, Kernan, Lamar, McPherson, Maxey, Merriman, Saulsbury, Voorhees, Wallace, Whyte, and Withers.

Those who voted in the negative are,

Messrs. Allison, Anthony, Blaine, Booth, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Chandler, Conover, Dawes, Edmunds, Hamlin, Hoar, Ingalls, Kirkwood, McMillan, Matthews, Mitchell, Morrill, Oglesby, Paddock, Plumb, Rollins, Saunders, Spencer, Teller, Wadleigh, and Windom.

So the amendment was not agreed to.

The resolution was then agreed to, and Mr. Ferry took the chair.

FORTY-SIXTH CONGRESS, FIRST SESSION.

Tuesday, April 15, 1879 (Journal, pp. 80, 81).

The Secretary called the Senate to order and read the following letter:

WASHINGTON, *April 15, 1879.*

SIR: A telegram received this morning advises me of the dangerous illness of a sister and summons me home. It will therefore be necessary for the Senate in its meeting to-day to elect a President pro tempore.

Respectfully,

W. A. WHEELER, *Vice President.*

The SECRETARY OF THE SENATE.

Whereupon Mr. Bayard submitted the following resolution:

Resolved, That in the absence of the Vice President the Hon. Allen G. Thurman be, and he is hereby, chosen President of the Senate pro tempore.

The Senate proceeded to consider the resolution; and

On motion by Mr. Anthony to amend the resolution by striking out the name of "Allen G. Thurman," and inserting in lieu thereof the name of "Thomas W. Ferry,"

It was determined in the negative, {Yeas 18 / Nays 28}

On motion by Mr. Wallace,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Allison, Anthony, Bell, Booth, Cameron of Pennsylvania, Cameron of Wisconsin, Chandler, Conkling, Dawes, Hamlin, Hoar, Kirkwood, Logan, Morrill, Plumb, Rollins, Saunders, and Teller.

Those who voted in the negative are,

Messrs. Bailey, Bayard, Call, Cockrell, Davis of West Virginia, Farley, Ferry, Gordon, Groome, Grover, Hereford, Hill of Georgia, Houston, Jonas, McDonald, Moxey, Pendleton, Randolph, Ransom, Saulsbury, Slater, Vance, Voorhees, Walker, Wallace, Whyte, Williams, and Withers.

So the amendment was not agreed to.

On the question to agree to the resolution,

It was determined in the affirmative; and Mr. Thurman took the chair.

Wednesday, June 25, 1879 (Journal, p. 262).

The Chief Clerk called the Senate to order, and read the following letter:

WEDNESDAY, JUNE 25, 1879.

SIR: I am prevented by illness from attending the Senate to-day; I therefore, in accordance with Rule IV, name Senator Eaton to perform the duties of the Chair until the adjournment to-day.

A. G. THURMAN.

The SECRETARY OF THE SENATE.

Whereupon Mr. Eaton took the chair.

Thursday, June 26, 1879 (Journal, p. 265).

The Chief Clerk called the Senate to order, and read the following letter:

THURSDAY, JUNE 26, 1879.

SIR: Being still too unwell to attend the Senate to-day, I name (under Rule IV) Senator Eaton to perform the duties of the Chair until the adjournment of the Senate to-day. I expect to be in attendance to-morrow.

Very respectfully,

A. G. THURMAN.

The SECRETARY OF THE SENATE.

Whereupon Mr. Eaton took the chair.

FORTY-SIXTH CONGRESS, SECOND SESSION.

Thursday, March 11, 1880 (Journal, p. 325).

The Secretary called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, D. C., March 11, 1880.

SIR: As I shall be absent at the opening of the session of the Senate this morning, under the provisions of Rule IV I name the Hon. George F. Edmunds, a Senator from the State of Vermont, to perform the duties of the Chair until the adjournment to-day.

W. A. WHEELER, *Vice President.*

To the SECRETARY OF THE SENATE.

Whereupon Mr. Edmunds took the chair.
(No objection was made to Mr. Edmunds taking the chair.)

(This is the first time an objection was not made to the assumption of authority by the Vice President to designate a Senator to perform the duties of the Chair in his absence.)

Wednesday, April 7, 1880 (Journal, p. 409).

The Secretary called the Senate to order, and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, April 6, 1880.

SIR: I shall be absent from the session of the Senate to-morrow and for several succeeding days, and the duty will devolve upon the Senate of choosing a President pro tempore.

W. A. WHEELER, *Vice President.*

To the SECRETARY OF THE SENATE.

Whereupon Mr. Wallace submitted the following resolution, which was considered by unanimous consent and agreed to.

Resolved, That in the absence of the Vice President the Hon. Allen G. Thurman be, and he is hereby, chosen President of the Senate pro tempore.

Mr. Thurman took the chair.

Thursday, May 6, 1880 (Journal, pp. 517, 518).

The Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, D. C., May 6, 1880.

SIR: Please notify the Senate that I shall not be present at its meeting to-day, and ask it to choose a President pro tempore.

W. A. WHEELER,
Vice President.

THE SECRETARY OF THE SENATE.

Mr. Wallace submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President the Hon. Allen G. Thurman be, and he is hereby, chosen President of the Senate pro tempore.

Whereupon Mr. Thurman took the chair.

FORTY-SIXTH CONGRESS, THIRD SESSION.

(The Vice President occupied the chair during this entire session, and consequently there was no election of a President pro tempore.)

SESSION OF THE SENATE SPECIALLY CALLED.

(Preceding the Forty-seventh Congress.)

Monday, October 10, 1881 (Journal of 47th Cong., 1st sess., pp. 7, 8, 9).

Mr. Isham G. Harris, of Tennessee, called the Senate to order.

Mr. Pendleton submitted the following resolution for consideration:

Resolved, That Thomas F. Bayard, a Senator from the State of Delaware, is hereby chosen President pro tempore of the Senate.

* * * * * * *

The Senate proceeded, by unanimous consent, to consider the resolution this day submitted by Mr. Pendleton, providing for the election of a President pro tempore of the Senate.

On motion, by Mr. Edmunds, to amend the resolution as follows, viz: Strike out all after the word "*Resolved*," and insert the following:

"That the credentials of Messrs. Warner Miller and Elbridge G. Lapham, Senators-elect from the State of New York, and of Nelson W. Aldrich, a Senator from the State of Rhode Island and Providence Plantations, elected to fill the vacancy caused by the death of the late Senator Ambrose E. Burnside, having been read, be placed on the files of the Senate, and that the oaths prescribed by the Constitution and laws be administered to said Senators by Mr. Henry B. Anthony, the senior Senator in service,"

It was determined in the negative, {Nays 33 / Yeas 34}

* * * * * * *

So the amendment was not agreed to.

On motion, by Mr. Edmunds, to amend the resolution by adding at the end thereof the words "for this day";

After debate,

It was determined in the negative, {Yeas 33 / Nays 34}

* * * * * * *

So the amendment was not agreed to.

On motion, by Mr. Edmunds, to amend the resolution as follows, viz: Strike out the words "Thomas F. Bayard, a Senator from the State of Delaware," and in lieu thereof insert the words "Henry B. Anthony, a Senator from the State of Rhode Island,"

It was determined in the negative, {Yeas 32 / Nays 34}

* * * * * * *

So the amendment was not agreed to.

On the question to agree to the resolution,

It was determined in the affirmative, {Yeas 34 / Nays 32}

(Yeas and nays omitted.)

* * * * * * *

So the resolution was agreed to.

Thereupon Mr. Bayard took the chair and addressed the Senate as follows:

SENATORS: I fully appreciate the honor paid me by this expression of your confidence, and in assuming the duties of President pro tempore of the Senate in obedience to the law, etc. * * *

(See Congressional Record, Senate, special session, Oct. 10, 1881, pp. 505–514.)

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. PENDLETON. Mr. President, I offer the following resolution, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. Harris). The Senator from Ohio offers a resolution, for which he asks present consideration. The Chief Clerk will report it.

The Chief Clerk read as follows:

"*Resolved*, That Thomas F. Bayard, a Senator from the State of Delaware, is hereby chosen President pro tempore of the Senate."

Mr. EDMUNDS. Mr. Chairman, I of course do not object to the present consideration of that resolution, but under existing circumstances I think it to be a duty, in accordance with the rules of the Senate, to present the credentials of Mr. Warner Miller and Mr. E. G. Lapham, Senators elected from the State of New York to fill the vacancies occasioned by the resignation of Senator Conkling and Senator Platt, from that State, and also the credentials of Mr. Nelson W. Aldrich, of Rhode Island, elected as a Senator by the Legislature of that State, in conformity with law, to fill the vacancy occasioned by the death of our late associate, Senator Burnside.

In order that my friend from Ohio [Mr. Pendleton] and the other Senators may not think that this is an inappropriate time to do this thing, I beg to read from the rule of the Senate on that subject. It is the seventh rule:

"The presentation of the credentials of Senators-elect and other questions of privilege shall always be in order, except during the reading and correction of the Journal, while a question of order or a motion to adjourn is pending, or while the Senate is dividing; and all questions and motions arising or made upon the presentation of such credentials shall be proceeded with until disposed of by the Senate."

I therefore, sir, send these credentials to the Chair and ask that they be read respectively.

The PRESIDING OFFICER. If there be no objection, the credentials will be reported to the Senate. The Chair hears no objection, and he instructs the Chief Clerk to report the credentials to the Senate.

The Chief Clerk read the credentials of Nelson W. Aldrich, chosen by the Legislature of Rhode Island a Senator from that State to fill the vacancy caused by the death of Ambrose E. Burnside in the term ending March 3, 1887.

The PRESIDING OFFICER. These credentials will lie upon the table. The Chief Clerk will now report the credentials of Mr. Lapham.

The Chief Clerk read the credentials of Elbridge G. Lapham, chosen by the Legislature of New York a Senator from that State to fill the vacancy caused by the resignation of Roscoe Conkling in the term ending March 3, 1885.

The PRESIDING OFFICER. These credentials will lie upon the table. The Chief Clerk will now report the credentials of Mr. Miller.

The Chief Clerk read the credentials of Warner Miller, chosen by the Legislature of New York a Senator from that State to fill the vacancy caused by the resignation of Thomas C. Platt in the term ending March 3, 1887.

The PRESIDING OFFICER. The credentials will lie upon the table.

Mr. EDMUNDS. These credentials having been read, and the gentlemen named therein being now present ready to take the oath of office, I move, in accordance with the precedents of the Senate, that the oath of office to these Senators be now administered by Hon. Henry B. Anthony, the oldest member of the Senate in continuous service.

The PRESIDING OFFICER. The Senator from Vermont [Mr. Edmunds] moves that the oath of office be administered to the Senators-elect by Senator Henry B. Anthony, the senior Senator of the body. Is the Senate ready for the question?

Mr. PENDLETON. I move that the motion of the Senator from Vermont do lie upon the table.

The PRESIDING OFFICER. It is moved by the Senator from Ohio that the motion of the Senator from Vermont lie upon the table.

Mr. EDMUNDS. On that question I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. PLATT (when his name was called.) I am paired with the Senator from Nevada [Mr. Fair]. This pair was arranged by my friends, who had authority to make it, at a time when it was supposed it would be inconvenient for me to attend the session of the Senate; and I shall recognize and respect the pair.

The roll call having been concluded, the result was announced—yeas 36, nays 34.

So the motion to lay on the table was agreed to.

Mr. EDMUNDS. Mr. President, I had supposed that some conclusive and overpowering reason would have been given by my honorable friend from Ohio for asking a majority of this body to refuse to admit the Senators from two States

lawfully elected, whose credentials had been read and against whom no objection had been interposed, the right to take the oaths of office and to participate in the first as well as the later deliberations of this body. None was given, and therefore there was no opportunity after the motion to lay upon the table was made for any reasoning or discussion upon such a subject, if there could be any possible for man to conceive.

Now, in order to have the opportunity to again test the sense of the Senate and to endeavor to find out what it means upon this subject, I move to amend the resolution offered by the Senator from Ohio by striking out all after the word "Resolved" therein, and inserting what I send to the Chair. I hardly think that will go to the table.

The PRESIDING OFFICER. The Senator from Vermont will please suspend until the Chair inquires if there is objection to the present consideration of the resolution of the Senator from Ohio.

Mr. EDMUNDS. I stated that there was none at all.

The PRESIDING OFFICER. The Chair hears no objection to the present consideration of the resolution, and therefore the amendmment of the Senator from Vermont will now be reported to the Senate.

The CHIEF CLERK. The proposed amendment is to strike out all after the word "Resolved" and to insert:

"That the credentials of Messrs. Warner Miller and Elbridge G. Lapham, Senators-elect from the State of New York, and of Nelson W. Aldrich, a Senator from the State of Rhode Island and Providence Plantations, elected to fill the vacancy caused by the death of the late Senator Ambrose E. Burnside, having been read, be placed on the files of the Senate, and that the oaths prescribed by the Constitution and laws be administered to said Senators by Mr. Henry B. Anthony, the senior Senator in service."

Mr. BAYARD. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. The question is upon the amendment offered by the Senator from Vermont, upon which the yeas and nays have been demanded.

The yeas and nays were ordered.

Mr. EDMUNDS. Mr. President, I should certainly have expected, as I remarked a little while ago, that any member of this body, not to say a majority of the members who are now sworn in, would hardly fail, when endeavoring to exclude the Senators from sister States from participation in the body, to give some very conclusive reason for it. None has been given; it seems that none is proposed to be given; and now I will take the liberty of stating the reason for it, if, as I said before, there need be any statement in advance of a reason for it.

It is true that we have met under extraordinary circumstances occasioned by events the consequences of which may have put it within the legal, technical power of a bare majority of the States conditionally to provide for the presidential succession, when, if their sister States were consulted, a different provision might be made—to provide for it under circumstances when, in order to make the provision they may desire, it is necessary that other States whose relations to the Union and whose right to representation appear in your own records now upon your table, and whose chosen representatives stand here ready to do their duty, shall be excluded in order that a minority of the forces in this Government may accomplish a grave purpose which they could not accomplish were the voices of all the States ready to be taken and entitled to be taken consulted.

I state this proposition, sir, in the simplest possible language, certainly without exaggeration and certainly without epithet or unkind comment. There is the fact, if the indication we have had by the previous vote of the Senate is to be taken as evidence that this course is to be persisted in, the same course with equal constitutional and legal propriety—no more, no less—may be continued for the whole of the number of years that each one of the three Senators whose credentials have been read is entitled to fill a seat in this body; and it would seem logically that the only ground upon which such a course of exclusion could be discontinued would be that there was nothing else to be gained by persistence, and that the sovereign States in this Union of States, whose equality of voice and representation the Constitution took pains to declare should never be diminished or excluded without their own consent in this body (even by an amendment of the Constitution) are to depend upon the political idea of what is expedient for a temporary majority as to whether they shall have places at all, and if they are to have places at all they are not

to have them until purposes can be accomplished that could not be accomplished were their lawful voice heard.

Is that the case? I only put it interrogatively. I should not dare to suspect that there could be such a case if I had not seen the evidence of this vote and I have been unable to comprehend upon what principle such a vote could have been given.

Somebody has said—I have seen it stated in the newspapers; it has not been stated here—that the law of Congress requires that the oath of office of a Senator-elect should be administered by the President of the Senate, either the Vice President, the constitutional President of the Senate, or the President pro tempore acting in his absence, and that this law is an exclusive law, by implication forbidding any other administration of such an oath, and hence that it is impossible legally to admit these gentlemen until there shall be a President pro tempore who can fulfill the statute and administer the oath. I must suppose (because, as I said, I must disarm myself from suspicion of political views) that to be the reason which actuated my honorable friend in moving to lay upon the table the resolution that I had the honor to offer.

I wish to say in the briefest possible manner that if my friend will look at the act of 1789 he will see that it was passed by a Senate and signed by a President pro tempore of the Senate, not one of whom had taken the oath prescribed by the Constitution. I do not speak of that as showing that the act is not a valid act; far from it; I speak of it as showing that when the just exigency of the case arises, this body as well as every other parliamentary body is entitled to receive members who otherwise are a part of it, and to act, if there be no means of acting otherwise, on the very first question as well as the last one that may be presented to the body, without taking an oath at all.

I repeat that for weeks and weeks the first Senate of the fathers, who had built the Constitution, did not find it inappropriate to admit Senators from all the States and to proceed to business, merely from the circumstance that there did not exist an officer who by law could administer an oath. My friends on the other side may say, "That is this case now; there is no officer who by law can administer the oath." Are we to be wiser or more critical than the fathers? If there be no officer to administer this oath, are we to say that two States—it might be 17 States or it might be 27 States, taking the constitutional term and the accidents of life—are to be excluded from any voice respecting the selection of the presiding officer of this body because the particular mode that a statute has pointed out can not be effectuated? I do not think so, Mr. President.

There was a time, something like the present perhaps, when a great and controlling party in this country possessed members whose memories now, though they are gone, have lent a splendor to the history, legal as well as political, of this country, who did not feel that they were violating the Constitution of the United States by doing precisely what I have proposed and now propose here.

On the 4th of March, 1853, the Senate of the United States met on the special call of the President of the United States in what is called an executive or senatorial session. There was no President pro tempore in the chair. There was one at the session before, who undoubtedly might have taken the chair and administered the oath to Senators-elect. For some reason, perhaps of personal delicacy, certainly none that I know of that is open to any criticism, he did not. What then? Did the Senate, at whose head then as oldest in service stood Lewis Cass of Michigan, and whose honorable coadjutors were Mr. Badger of North Carolina, Mr. Gwin and Mr. Weller of California, Mr. Houston and Mr. Rusk of Texas, Messrs. Dodge and Jones of Iowa, Messrs. Mallory and Morton of Florida, Mr. Borland and Mr. Sebastian of Arkansas, Messrs. Atchison and Geyer of Missouri, Mr. Hamlin of Maine, Mr. Fitzpatrick of Alabama, Stephen A. Douglas of Illinois, a name still bright with real Democratic fame; that great and patriotic soldier James Shields; Messrs. Chase and Wade of Ohio, Messrs. Benjamin and Soulé of Louisiana, Mr. Jones of Tennessee, Messrs. Dawson and Toombs of Georgia, and a long list of others from all the Northern and Eastern States whom I might name—did they feel that this act of 1789 was to exclude a single man whose credentials were presented and regular in form from taking part in the election of a President pro tempore of the Senate? Not at all On that occasion, with this statute before their eyes, the Senate being called to order as it was on this occasion, with the single exception that it was called to order by the oldest Senator in service, but called

to order as it has been wisely and properly on this occasion by one of our own number, no matter who—

"On motion by Mr. Badger, and by unanimous consent,

"*Resolved*, That the oath prescribed by the Constitution be administered to the new members of the Senate by the Hon. Lewis Cass, the oldest member of the Senate—"

I read from the Journal—

"The credentials of the following Senators having been heretofore read,—"

As is now this case—

"the oath prescribed by law was administered to them by the Hon. Lewis Cass, and they took their seats in the Senate, namely:"

Mr. Atherton from New Hampshire, Mr. Benjamin from Louisiana, Mr. Clayton from Delaware, Mr. Evans from South Carolina, Mr. Everett from Massachusetts, Mr. Houston from Texas, Mr. Hunter from Virginia, Mr. Jones from Iowa, Mr. Sebastian from Arkansas, Mr. Stuart from Michigan, Mr. Thompson from Kentucky, Mr. Thomson from New Jersey, Mr. Toombs from Georgia, Mr. Wright from New Jersey, and Mr. Douglas from Illinois. That having been done—

"Mr. Shields submitted the following resolution; which was considered by unanimous consent and agreed to:

"*Resolved, unanimously*, That the Hon. David R. Atchison continue President of the Senate pro tempore."

You will see, therefore, Mr. President, that although it is true that often and often when the mere convenience of the moment made it more agreeable and when nothing was in question about which Senators might be divided Presidents pro tempore have been elected and then administered the oath, yet here the Senate of the United States, composed of men who at that time, in that period, probably were as eminent, as wise, as scrupulously careful of the Constitution as any that had preceded them (it would perhaps not be parliamentary for me to say any who have succeeded them), thought it was their duty, before they proceeded to the disposition of the question of the presiding officer of the Senate, to swear in the new Senators, and to swear them in in that way.

How did they get over the statute? somebody will ask. It is not to be supposed that they thought they were violating it, for if they were violating a lawful and constitutional statute they were violating their own oaths, for they had all sworn that they would support the Constitution of the United States, and I take it nobody will dispute that an oath to support the Constitution of the United States binds the conscience of every man who takes it to support every constitutional law of the United States, which becomes a part of it. They thought, and so they acted, that this act of 1789 had received its own construction by the very body that passed it, and that was that it was that directory provision for the convenient and orderly administration of the Government which the two Houses of Congress were expected to follow unless the absence of the convenient means of following it would put them back upon their own inherent powers. I need not tell my honorable friend from Ohio, and I need not read to him the authority to show it, that by the ancient constitution of all parliamentary bodies the power to administer oaths respecting their own proceedings (I limit it to that, of course) is inherent, and part of their power and existence as a body. And so on this occasion those gentlemen were sworn in.

Why should not these gentlemen therefore be sworn in now? Do you say the statute forbids it? I deny it. Do you say it is not according to the course of precedent? I deny it, for whenever it has been proposed it has always been done. And I do not believe that if there were not some question ulterior to this mere one a single Senator would lift up his voice to say no to the proposition that these gentlemen should be now sworn in, for who would doubt the power of the Senate to direct under existing circumstances that any Senator, the oldest preferably as a matter of courtesy, should administer the oath? I should be glad to hear from my learned friend from Ohio, who I must suppose has some controlling reason in his own mind, what this means.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Vermont to the resolution offered by the Senator from Ohio. Is the Senate ready for the question?

Mr. GARLAND. Mr. Chairman, I will not detain the Senate for any length of time in discussing the points presented by the Senator from Vermont, for really I think the question is one that is narrowed down to a very small compass. I

will not undertake to make any response to the assertion of the Senator from Vermont that possibly there was some ulterior motive on the part of the Senator from Ohio, or any other Senator, or all the Senators on this side of the house, in proposing the proceeding which we now ask to be adopted. Believing as I do, and believing as the Senators on this side do, that we are simply following the law in this case, we have no apologies to make to the Senator from Vermont or to any other person or body of persons. If we are mistaken in the course that we propose to adopt here, then it is a mistake which both we and the country will regret; but I am satisfied, for one, after a most painful investigation of this matter with a desire to arrive at a proper conclusion, if ever I had a sincere desire on any subject, that we propose to follow the law in this case; and that I will proceed to show.

What, Mr. Chairman, are we here for to-day? What is the purpose of convoking this assembly at this time? What was the object of the Senate being called together and the only object, so far as the country knows and so far as the world knows? It was to place some one between this Government and possible anarchy in case of the death or the taking away by any other means of the present President of the United States, and that is the person of a President pro tempore of the Senate to be elected here now. That was the object of this meeting, and it is for that purpose that this great concourse of people is here to-day, and for no other purpose. We propose, then, at once to discharge the duty that is imposed upon us by the law of the land, moved and incited thereto by the proclamation of the President of the United States.

The Senate is a continuing body. It has members enough whenever it may meet, in legal contemplation, to transact its business; and it is not so much the intention of the calling of the Senate together to provide a mere temporary President, or President for the time being, as it is to fill up that possible gap which there may be in the administration of this Government. Hence it is a high duty, it is a great duty, that precedes all others in importance, that precedes all others in the law and under the law of the land. It precedes the question of the swearing in of a Senator in this body; it precedes all other questions in this country, according to my judgment, and it is a question that has never before been presented to this country. It is an anomalous occasion that calls us here. We propose decently and in order and according to law, on our interpretation of it, to fill that possible gap at the earliest practicable moment that we can.

Now let us go to the law; and, for one, I never want to be wiser or more virtuous than the law. I am willing always to stand upon that, and if it is a bad law, an inconvenient law, or an unjust one, woe to those who have provided it; our duty is to obey it. The second section of the act of 1789 is:

"That at the first session of Congress after every general election of Representatives, the oath or affirmation aforesaid shall be administered by any one Member of the House of Representatives to the Speaker; and by him to all the Members present, and to the Clerk, previous to entering on any other business; and to the Members who shall afterwards appear, previous to taking their seats. The President of the Senate for the time being shall also administer the said oath or affirmation to each Senator who shall hereafter be elected, previous to his taking his seat."

The President of the Senate pro tempore, or "for the time being," is to administer the prescribed oath. No one will contend that the Senate would not have power perhaps to displace that by making some other provision by unanimous consent. The statute I have just read is a part of the law of the land carried into the Revised Statutes of the United States and recognized and solemnly adopted by Rule 63 of the Senate, which is a law to this body. That rule declares:

"The oath or affirmation required by the Constitution and prescribed by the act of June 1, 1789—"

What oath? The oath to all these officers, to the Members of the House and Senators, that oath which the law prescribes shall be administered by the President of the Senate pro tempore—

"shall be taken in open Senate by each Senator before entering upon his duties."

Thus the Senate has recognized this statute and has prohibited positively the taking of the oath anywhere else than in the open Senate. There is law enough to suit almost any person, I think. There is the statute passed in June, 1789; there is Rule 63 of this body that recognizes that statute and makes a further provision as to where that oath shall be taken.

But is it a matter of fact under the usual parliamentary law, Mr. Chairman, that this is obligatory upon us? I suppose nobody will controvert the position assumed by the Senator from Vermont that this oath can be administered under the arrangement of the body to which these gentlemen come. It can be administered by a Senator here under a resolution unanimously agreed to—be administered by yourself, sir; but is it an inexorable rule; is it a rule without change; is it an unbending rule that this oath must be administered as contended for by the Senator from Vermont? Let us see what the authorities on the subject say. Cushing's Parliamentry Law, pages 106 and 107, says:

"The three essential parts of an organization are the qualification of the members, and the choice of the presiding and recording officers. In some of our legislative bodies the speaker or president is first chosen, then the members are qualified, and lastly the clerk or secretary is chosen; in others, the members are first qualified, then the clerk elected, and lastly the presiding officer; and, in others, again, the members being first qualified, the election of the speaker or president precedes that of clerk."

We are left to take either one of these courses under the parliamentary law as we see proper in the order named; but unless we agree on all sides to one of them, where are we remitted? We are remitted back to the act of 1789. For the convenience of the Senate I admit they may by consent adopt a different rule. They may call upon the senior or the junior member of the body; that has suited the convenience of the Senate repeatedly; there is no question about that; but that did not fix a law nor could it fix a law in the teeth and face of the statute of 1789 if any Senator had objected. That proceeding was by unanimous consent, nobody objecting. We frequently, by common or unanimous consent, do things here otherwise than is prescribed by law or rule, and they go forth as legal. But if those things had been questioned by any Senator at the time, they would not have been done. In other words, the fact that we do not adhere to the law on all occasions is no reason why the law should not be enforced and complied with when it is invoked. And so I might concede here for the present that we may by unanimous consent do otherwise than the law requires in our proceedings and for the time make a law for ourselves, yet when that law is asked to be enforced by even one Senator it must be complied with. Our rules require that a bill shall have three readings on three separate days; and yet how often do we see a bill read twice and referred to a committee in one day because no Senator objects?

In the present anomalous condition of affairs here, we choose to stand upon the statute of 1789 in proceeding to the important duty of filling up the possible gap between us and anarchy in this Government.

Now, Mr. President, it is not the question of an accidental majority; it is not the question of exercising a power which we have by accident; that can not be charged to this side of the House. We saw here last spring two honorable Senators on the other side of the chamber voluntarily return their high trust from the State of New York to the people who had given it to them. Certainly that was not the fault of our side, nor was it instigated by this side. We sought to take no advantage of it then; everything moved along in its regular course as though this had not occurred. Providence has seen fit to strike down an honored and honorable Member on the other side of this Chamber, one who was beloved by us all, and whose loss was sincerely mourned by the country. These are not circumstances that can be charged to this side of the Chamber. We can not be held up before the country as taking advantage of accidental circumstances. If these events had been brought about by any action, direct or indirect, of this side of the Chamber, I would die in my tracks before I would lend my voice to take advantage of them; and such I believe is the sentiment of every Senator on this side of the Chamber.

Our position is that as the oath of membership must be administered by a President pro tempore of this body, we must elect that officer first, so that there may be some one to swear in the new Senators, and this we offer to do. The requirement of the act of 1789 may by unanimous consent on various occasions to suit the convenience of Senators have been displaced by administering the oath as stated by the Senator from Vermont [Mr. Edmunds], but we are guilty of no shortcoming when we say that we will follow the law and the law is the proper exponent of our duty. I am always satisfied as long as I can hold myself and my party friends within the portals of the law.

Mr. EDMUNDS. Mr. President, the question seems to be reduced then, as it truly should be, to the mere choice of the body. I am gratified to have heard my honorable friend from Arkansas [Mr. Garland] admit, with the

candor that is characteristic of his career, that the Senate has a lawful and constitutional right to direct at this moment that the oath of office shall be administered to the Representatives of these two States, and that they therefore would be lawfully and justly entitled to participate in the action of their sister States in choosing a provisional President of the United States. I of course do not speak technically when I say "provisional President," but in the common language of men. I think my friend did say, however, that these events took place on former occasions by unanimous consent; but I am sure he can not mean that unanimous consent can change the binding obligation of a law. Unanimous consent can change the law of this body, because the unanimous consent makes it another law of the body; but a constitutional act of Congress, I take it, could hardly be changed or dispensed with by the unanimous consent of the Senate.

What I understand him to mean, therefore, is what I stated before, what is clearly the law, that it is within the lawful and constitutional and regular competence of this body now, before it has a President pro tempore, to do as it did in 1853, when this same law was in force and before the election of a President pro tempore, to swear in the Senators entitled to seats in order that the voices of their States may be heard with their sisters in the selection of a presiding officer of this body. To be sure, then, Mr. President, the prize—if we can speak of this vacancy as a prize won in the lottery of assassination—the prize was not the conditional power in a contingency to administer the office of President of the United States; it was the prize of honorable mention, the prize of a duty chiefly consisting of drudgery and work. That was all.

Does my honorable friend mean to say that if the voice of the eight or ten States whose Senators were then sworn in was to have been exercised upon a matter of consequence to their States and to the general welfare they would have been excluded? I should have supposed that the greater the consequence to follow the first act of the Senate in electing a President pro tempore, the greater the importance and the duty of having every State exert its voice and express its opinion upon that question. There is no denying that. And therefore it appears to me, in the course this argument has taken, to resolve itself into this: That while it is admitted to be perfectly competent and right for the Senate of the United States to swear those gentlemen in now, it will not do it because, they having been sworn in, a question of great importance might be differently decided to what it may be if they are not sworn in! If that be so, sir—and I regret extremely to be forced by the apparent logic of this situation to believe it—where is our fidelity to the Constitution of our common country, and to the common equality and right of every State in it? If this were to go on, in the change of events in 1883 it may happen that the outgoing Senators will leave here a clear and decided majority of one party—I do not mind which—which clear and decided majority of one party if the incoming Senators were sworn in would be overturned, and it would be largely the other way. If this be a right precedent, why will it not be right then for those who hold over to hold on and accomplish all the acts of legislation that they think are desirable to their ends before they admit their fellow Senators from other States, and so on, and so on? The fact that there are only three Senators now in the question does not change it. As I said before, it might be 33. Where is your Government then, sir? Why, Mexico or the unhappy Republics of South America would be far preferable to this. The Constitution would be the emptiest urn, held in the withered arms of some coming man in this country, with the sacred ashes of its life torn in the winds of party acrimony. I shall not believe it possible, sir, until I see it by a vote of this body, that, admitted as it now is that it is lawful to swear these men at this time, this body will refuse to do it before it proceeds to any other business whatever.

The PRESIDING OFFICER. The question is upon the motion of the Senator from Vermont to amend the resolution of the Senator from Ohio. Is the Senate ready for the question?

Mr. EDMUNDS. I call for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

Mr. ANTHONY. Let the amendment be reported.

The PRESIDING OFFICER. The amendment will be again reported.

The CHIEF CLERK. The amendment is to strike out all after the word "Resolved" in the original resolution and insert:

"That the credentials of Messrs. Warner Miller and Elbridge G. Lapham, Senators-elect from the State of New York, and of Nelson W. Aldrich, a Senator from the State of Rhode Island and Providence Plantations, elected to fill the

vacancy caused by the death of the late Senator Ambrose E. Burnside, having been read, be placed on the files of the Senate, and that the oaths prescribed by the Constitution and laws be administered to said Senators by Mr. Henry B. Anthony, the senior Senator in service."

The PRESIDING OFFICER. The question is on this amendment, on which the yeas and nays have been ordered.

The Secretary proceeded to call the roll.

Mr. MCPHERSON (when his name was called). On this question I am paired with my colleague [Mr. Sewell], who has been unexpectedly called away.

Mr. WALKER (when his name was called). On this question I am paired with the Senator from Colorado [Mr. Hill]. If he were here he would vote "yea," and I should vote "nay."

The result was announced—yeas 33, nays 34.

So the amendment was rejected.

Mr. EDMUNDS. Mr. President, I hope I shall now have the happiness to command the votes of honorable Senators who have voted against the proposition that I have just submitted. Nobody, I believe, has expressed a disposition to exclude these Senators from every deliberation and act of the Senate to which they can be properly admitted, and the objection made to the amendment I had the honor to offer before was that the present acting majority of this body thought proper to follow the law and to have these oaths administered by the President pro tempore of the Senate. As the majority has so thought, I am bound to yield my acquiescence to that course; and in order to accomplish that purpose and at the same time not to stifle the voice of these two States in our deliberations, I move to amend the resolution now pending by adding at the end of it the words "for this day;" so that it will read:

"That Thomas F. Bayard, a Senator from the State of Delaware, is hereby chosen President pro tempore of the Senate for this day."

That, Mr. President, will fulfill the most extreme Mosaical view of the law. We come up to the statute; we embrace it, and if our object be to follow the law we follow it, and if we have left any reverence for the Constitution in allowing every State lawfully here by its Members to speak, we can follow the Constitution, too.

My learned and honorable friends might think, perhaps, that this is a novel motion, and that as the Constitution says that the Senate may elect a President pro tempore, he must be elected a President pro tempore simply and purely, neither more nor less, without any limit to the duration of his career other than the will of the Senate. If any man's mind should be discomposed upon such a question, I beg leave to refer to another notable and honorable precedent of a Democratic majority of the Senate of the United States in the year 1854. When the Senate met on the 4th day of December of that year there were two Senators-elect who had not been sworn in. That makes it different from this case, because there are three here. I mention that so that anybody who wishes to make a point of it may have the advantage of it. The Senate having been called to order and the fact that the President pro tempore of the Senate was not present having been communicated—

"On motion by Mr. Hunter, and by unanimous consent,

"*Resolved*, That the Hon. Lewis Cass be President of the Senate pro tempore for this day.

"On motion by Mr. Broadhead,

"*Ordered*, That the Secretary inform the House of Representatives, etc."

That being done, then—

"Mr. Foot presented the credentials of Hon. Lawrence Brainerd, chosen a Senator by the General Assembly of the State of Vermont to fill the vacancy occasioned by the death of Hon. William Upham; which were read, and the oath prescribed by law was administered to Mr. Brainerd, and he took his seat in the Senate."

And I think there was another Senator sworn in, but I will not take the trouble to look; I said two a moment ago, but that is of no consequence. And I believe, Mr. President, that only a session or two ago, while the late Senator from Ohio, Mr. Thurman, was occupying the office of President pro tempore of this body and was unable to be present on one occasion and, therefore, his office legally would fall and a new presiding officer would be elected, it was moved that Hon. Mr. Eaton (if I recollect the Senator aright) be made President pro tempore for that day, and that was done. Indeed I need not take time, I think, to discuss a proposition so plain.

I repeat, we can have a President pro tempore for this day and for this occasion. We can follow the law and call or rather admit to their just seats

in the deliberations of this body the representatives of two States, and then proceed to-morrow to determine who shall be President pro tempore for that day or any other. Unless, I repeat, we desire to prevent those States from taking part in an important act belonging to this body we can permit them to exert their lawful rights conformably to the Constitution, conformably to the letter of the law which my learned friend from Arkansas desires to follow, conformably to the gracious precedents of Democratic Senates. Will we do it? Let us see.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Vermont.

Mr. BECK. Mr. President, I desire to say that the law of 1789 and the rules of this Senate require that a President pro tempore be elected by the Senate prior to the swearing in of new members, and that the oath shall be administered by him to them in the open Senate. That it is proposed to do; no more, no less.

Why the President pro tempore should be elected for this day and then have another election again, when the occupancy of the chair by the President pro tempore of the Senate is always in the power of the Senate and in the power of a majority of the Senate, I am not quite able to comprehend. I am always afraid of mischief from modifying resolutions of this character. I have seen very modest words accomplish great results when they were said to be very innocent at the time they were inserted. I remember the "if any" of the Electoral Commission law that cut a tremendous figure in that great fraud and deprived several States of their rights in that electoral count within a very recent period. When we stand by the law as it is, and leave the whole question hereafter in the power of the majority of the Senate, there can be no wrong done to anybody. As was well suggested by the Senator from Arkansas, if the present President of the United States, then the President of the Senate, at the last session of this body had followed the precedents which had been usual and almost universal before, and allowed this Senate to elect a President pro tempore, there would have been no necessity for his convening us in session now. When the Senators from New York saw fit to resign, I suppose he did not vacate his seat and give the Senate a chance to elect its own President pro tempore for some reason satisfactory to himself and to his party friends, and hence we are called together.

Now we propose to stand by the law and by that alone, and not to accept any modification such as is now proposed. Nobody denies that unanimous consent can do almost anything here. The simple thing is that we do not propose to give unanimous consent to any proposition except to carry out the law of the land. Men can be sworn in otherwise; unanimous consent can do nearly anything in the Senate; and we are taunted with seeking to do indecent things because we do not give unanimous consent to propositions made in contravention of the law of the land.

That is all there is of the case, and I think this side of the Chamber do not propose to give unanimous consent to anything, except in an orderly way to execute the law as it stands upon the statute book. If that law is a bad one, change it.

I ask for the yeas and nays on the amendment now offered.

The yeas and nays were ordered.

Mr. GARLAND. Mr. Chairman, one word. According to my version of the law, while the Senate has the power to do what the Senator from Vermont suggests in his amendment, it is entirely unnecessary to do so because the tenure of office of the President pro tempore has been distinctly defined by a resolution of this body which I believe now receives the approbation of every person—a resolution adopted January 12, 1876, in these words:

"*Resolved*, That the office of President pro tempore is held at the pleasure of the Senate."

So that after Mr. Bayard shall have been elected President of the Senate pro tempore a majority may any day elect somebody else so that he can return thanks and retire. That is already the tenure of office, as everybody understands, and it would be just exactly like incorporating this construction in the resolution expecting the Senator from Delaware to follow it up by saying that he holds his office at the pleasure of the Senate. That is the legal interpretation of the amendment offered by the Senator from Vermont, so that it calls upon us to do an entirely unnecessary thing.

Mr. EDMUNDS. Mr. President, I beg to assure my distinguished friend from Kentucky that no gentleman on this side has asked unanimous consent to do anything. We have so far, those of us who merely by grace apparently con-

tinue to occupy seats—for the majority of this body might if it found sufficient motive for it (I do not know how great and extensive that motive would be) could by a simple resolution declare that our credentials were invalid and out we should go; that does not appear to have been thought necessary yet—we have not asked unanimous consent for anything. But we who, by grace, or law, or whatever, are yet entitled to represent our States in this body, are endeavoring to understand, and are endeavoring, I confess, to have the people of the United States understand, upon what ground it is that two States whose relations to the Union and to this body are unquestioned, the three Senators whose credentials are unassailed, now on your table and standing here ready to be sworn, shall not be. That is what we intend shall be understood, and in doing that we ask no consent. We follow the law, we follow Democratic precedent, which down to this time whenever it has been desired either for convenience or for right has sworn in Senators of both parties before it proceeded to the election of an indefinite President pro tempore. If it be thought that some patriotic impulse inspires you to reverse that and to accomplish what you know can not be accomplished without the exclusion of these States, do it.

There is an ancient saying that has proved true forever that they who take the sword will perish by it; and I think if we believe at all in free institutions with orderly government (and I do), that they who by methods and by will achieve advantages by the exclusion of their equals from the conference out of which they are to come will reap bitter fruit in the end.

I think that whatever fruit is gained from that will be ashes of the bitterest description. But that is for the future. For the present it is our mission to appeal to you Senators by the precedents of your own party, by the conduct of your own honorable predecessors, by the spirit and the letter of the Constitution, in this way that does comply with the law in every particular, letter and spirit, to give your sister States the right that you are to exercise yourselves of choosing the presiding officer of this body.

My learned friend from Arkansas says, "Why, you can turn him out tomorrow." True; but why do we shut our eyes, when the eyes of all the world are open elsewhere, to the fact that apparently, probably it may be, you are to achieve this thing and put it out of the power of these Senators whom you deny a voice now to overturn your resolution? That is what it is. It is somewhat bare, therefore, of reason to say, "Exclude these gentlemen now because having come in they can participate in the rectification of the error, if it be an error that we are now to commit by electing the wrong gentleman President of the Senate." No, Mr. President, it stands upon that deeper, broader ground that if by any possible expedient of this body it can be avoided, no State, great or small, is to be excluded from the first as well as the last act that this body is to do, whether it be trifling or whether it be important, for among equals all are equal, and if the voice of equals is to be heard the voice of all the equals is to be heard at the same time if it can be done consistently with law. You admit that it can be done consistently with law; you admit that this present proposition follows the very statute upon which you stand. Why will you not do it? Do you think that Lewis Cass and James Shields and David R. Atchison and that great array of names appearing in the Journal of 1854 committed a mistake when they provided that there should be a President pro tempore for one day in order that the new Senators to come in (as I must suppose) should be sworn and then participate on the next day in the choice of a President pro tempore to hold indefinitely at the will of the Senate? Do you think that they mistook the meaning of the Constitution and that just regard for the rights of their equals to speak as well as they? It may be that you do. I must suppose that you think so, and that the shades of Cass and Shields and all the others are roaming uneasily in whatever departed good land they may be, as they now hear, as we may hope, our deliberations, at the mistake they had committed which their wiser children are about to avoid. There used to be an old phrase, Mr. President,

"O Shame, where is thy blush?"

but I believe that, like the methods of the fathers, like the practice of Cass and his associates, has gone by, and our modern shame, if such a thing exist, has lost her blush and that it has come to be a fixed purpose of any temporary and accidental power in this body growing out of the constant changes of Senators by expiration of terms or death or resignation to exclude their fellows and their equals until they can grasp something that if their fellows and equals were present they could not grasp. Well, as I say, sir, the future will rectify it if it be done.

Mr. MORGAN. Mr. President, notwithstanding the great misfortunes that have befallen the Senate and the country, we still have something left upon which to congratulate ourselves; and that is the exhibition in the Senate this morning of the fact that the Senator from Vermont, after having by his vote and voice frequently participated in excluding sovereign States from a voice in this Senate, has at last come to the conclusion that they must be admitted whenever the credentials of Senators are presented, without investigation and without inquiry even on the part of the Senate or of Senators. The country is evidently progressing toward a better condition, toward a state of relief from that very stringent rule which has been applied so frequently to Members of the Senate on this side of the Chamber by which they were compelled, though having full and lawful credentials, to stand knocking at the door of the Senate for days and weeks and months and years, barred out by the vote of the Senator merely because he desired to have inquiry made before our credentials were permitted to have their full legal weight in this body. The examples stand around me so thick to-day of the injustice inflicted upon States of the American Union by this course of procedure that it would seem almost unnecessary that I should mention the names of States that have been deprived of their suffrage in this body.

Here is the State of South Carolina that was kept out for months and years. The State of Louisiana was disbarred her right to come into the Senate of the United States upon proper and lawful credentials. The State of Mississippi was compelled to stand here when the honorable Senator who now occupies the seat in my rear [Mr. Lamar] brought lawful credentials from a lawful Legislature, presented them to this body, and without reasonable excuse he was delayed in his admission for two days. The State of Alabama in the person of the Senator who now addresses the body was in like manner excluded. And never did the Senator from Vermont rise upon the floor to demand that these Senators should have their right to a voice and their "suffrage" according to the language of the Constitution in this body.

Pending these exclusions from the Senate, the gravest matters of public interest were enacted by this body; you entered into legislative sessions; you pursued the even tenor of your way in imposing laws upon our States to which the people were bound to yield obedience, and yet you silenced the suffrage of Alabama and Mississippi and South Carolina and Louisiana in this body without remorse and without the slightest appearance of sympathy or of feeling. You entered into executive session and confirmed nominations, often of men who exercised the functions of their offices within these several States, and yet no voice was raised even to intimate that these States were the equals of other States in this Union and should be admitted to their suffrage in this body. Now there appears to be a purpose sufficiently urgent to animate the honorable Senator from Vermont to a very earnest advocacy of the doctrine we then contended for, and which we yet admit to be just and true. Not content, however, with an urgent and vehement presentation of this doctrine, the honorable Senator from Vermont even taunts this side of the Chamber because we are not willing to abdicate a solemn and sworn duty to obey the laws and Constitution of this country in the organization of this august body. There seems to be in the contemplation of the Senator some great crime which we are about to perpetrate, because we follow the mandate of the laws.

Let us inquire, Mr. Chairman—suppose it had turned out that the Senate of the United States had by the Constitution the duty devolved upon it in last February of the election of a Vice President of the United States, in case the electoral college had failed to make a choice, who would become President of the United States in the event of no election by the House. At the time of the count of the electoral votes there was a majority I believe of seven Democrats in this body. Suppose that this duty had been devolved upon the Senate when we had seven majority, would any man have expected the Democratic Party in this body to have elected a Republican to that office? Why surely the world would have considered that we had abdicated the most solemn duty that rested upon us with reference to our relations to the States and people that sent us to this body. Precisely in that very light does the question stand to-day. Here we are by law, and not by our act, placed in a majority of this body, and is it expected of us that, representing the States that sent us here, we shall do otherwise than we would have done last February when our majority was seven members in this body? The parallel is so plain in reference to the obligations of our duty that it seems to be impossible to disregard the conclusions to which it leads.

A State of this Union by the act of both its Senators retired from this body during the last called session. That State, so far as the Senators could affect its relations to the Senate of the United States, seceded from this body. They were not provoked to that by any conduct on the part of the Democrats in the Senate. It was their own act of voluntary imprudence or impropriety. We had then no responsibility resting upon us, and we have none now, for the withdrawal of the State of New York from this body.

Then it was our right and it was our duty, if the opportunity had been allowed us, to have selected a President pro tempore of the Senate who, according to all the laws and rules governing in such cases, would have entered on the duties and functions of his office without the necessity of this second called session of the Senate. What has made it necessary that the President of the United States should assemble this Senate to-day in extraordinary session? Nothing but the fact that that same gentleman while occupying the office of Vice President and presiding in the Senate chose not to follow the almost unbroken traditions of this body in withdrawing from it and allowing a President pro tempore to be elected. He was sustained in that course of conduct, doubtless, by his party. Then it was apprehended, I dare say, as it is now, that we would elect a distinguished and worthy Democrat to fill that office, and we would have voted on that occasion to elect a Democrat, and would have been bound in honor as Democrats to have done so, as was conceded virtually by the fact that the Vice President declined to yield the chair according to the custom and allow us to elect. So to-day finding ourselves here with a majority capable of electing a President of the Senate, it seems to me to be an interference in the freedom of our will for Senators on the other side to demand that we should yield the power which they have thus placed in our hands and allow them to elect a Republican President of the Senate.

That is the situation now, so far as the facts are concerned. This body met here this morning, and is now in session in what capacity? Not as an organized Senate; I scarcely know how to designate it, but perhaps the idea of a grand committee is the most appropriate with which to signify or to express the view that I entertain of the present condition of this body. Convoked by the President of the United States, Senators met here, and by unanimous consent the honorable Senator from Tennessee [Mr. Harris] called the body to order; he now occupies the chair, and we are proceeding with the necessary legal steps to organize a legal, constitutional Senate. The Senators are here; motions and resolutions are pending, and we are discussing them under this consent with the view to the organization of a lawful, constitutional Senate. We could not at this moment of time, for instance, send a message to the President of the United States that the Senate is organized and ready to receive from him any communication he might choose to send to us, the reason being that we are not yet a Senate. Then comes the law of the land, enacted in the very beginning of the Government, which prescribes that the President of the Senate shall administer the oath of office to Senators, and then comes the rule of the Senate which prescribes that in addition thereto this oath shall be administered in the open Senate, and by the President of the Senate. Now, we are endeavoring to follow this law and this rule so as to execute the law in obedience to what we conceive to be our sworn duty as Senators.

As to where the choice shall fall, that is a matter of little consequence compared with the great duty that is devolved upon us by the Constitution and laws of this country. We are now proceeding to execute that law, and the honorable Senator from Vermont arises and reads a precedent, and he invites us by following that precedent to abandon our duty under the law. He cites us to the fact that some of the most eminent Democrats in the country on one occasion felt themselves at liberty in their own consciences to abdicate a duty under the law. The ready reply to that is that the more steadily and uniformly and consistently we observe the laws of the land the better and higher example we set to the people and all other departments of this Government, and we can find no excuse in following a precedent which Senators must logically concede is contrary to and in violation of law. That is enough for us; it surely is enough for me. My conduct will be governed and guided strictly by that consideration.

The honorable Senator from Arkansas [Mr. Garland] perhaps might have conceded—I believe he did not intend to do so—that by unanimous consent the Senate of the United States could prescribe a method of admission to this body which would not be in conformity to the statute law. I would not go so far; I do not think that is a proper interpretation of the law or the Constitution

nor of our duties under them. The rule of law prescribed in the statute of 1789 and in the sixty-third rule of the Senate relates not to the "qualifications" of a Senator, but it relates to the method of his induction into office. The qualifications of a Senator are prescribed by the Constitution of the United States, and a man who comes within the range of those qualifications so as to fulfill them is a Senator whenever he is inducted into his office in the manner prescribed by law, and not before. The qualifications of the President and Vice President of the United States are also prescribed by the Constitution, but no man can be considered as otherwise than a mere de facto officer, he surely can not be considered a de jure officer, until he has taken the oath prescribed by the Constitution of the United States and has thereby been inducted into the office. The Congress of the United States, exercising a power its right to exercise which has never been disputed, has prescribed the law and the Senate has prescribed the rule to which allusion has been made several times this morning. Now, we must obey that law and obey that rule, or else disobey them. That law and that rule do not fix the qualifications of Senators, as to which a great deal is left to the judgment of the Senate; but they do fix a method of induction into office which can not be disregarded.

I will suppose that lacking one qualification, once required by a statute of the United States to be expressly stated in what is called the ironclad oath, I had been elected to the Senate of the United States, and I had chosen to take some other form of oath than that, and before a magistrate outside the walls of this Chamber and not in the presence of the Senate, and I had come in here with my credentials and a certified copy of that oath and had demanded admittance to this body; it could not be argued that the Senate of the United States could have admitted me to a seat in this body under those circumstances without violating the law of the land, without nullifying the law enacted by Congress and approved by the President of the United States.

What composes a quorum of the Senate of the United States? Senators on the other side of the Chamber found themselves compelled a few years back, in order to account constitutionally and legally for the absence of many excluded States, my own among the number—11 I believe it was at the time were excluded—to adopt this rule, the first rule in the book:

"The presiding officer having taken the chair, and a quorum (which shall consist of a majority of the Senators duly chosen and sworn) being present, the Journal of the preceding day shall then be read, and any mistake made in the entries may be corrected."

There in prescribing what was a quorum of the Senate you adopted a rule that it should be a majority of those Senators who had been duly chosen and sworn, and in another rule you prescribed the manner in which they should be sworn. Both by rule and by statute has that particular duty been especially guarded. Why has the Congress of the United States and the Senate of the United States given so much attention to a matter which may be frittered away by a bare majority vote of the Senate alone whenever it sees proper to do it? Why has the Congress of the United States prescribed the form of oath and prescribed the manner of its being given and the officer by whom it shall be given and the place at which it should be given, if all this is to stand subject to the mere caprice of the Senate which by a majority may set aside the rule and repeal the law at the same time and admit a man contrary to the rule and contrary to the law? I can scarcely suppose that so much time and care was wasted on a subject of this kind.

The honorable Senator from Vermont said that he had not heard it stated or even intimated that any Senator on this side of the Chamber had any substantial objection to the admission of the Senator from Rhode Island and the two Senators from New York. It is not for me to say whether such substantial objections exist or not; but quoting, not literally, but according to the general tenor of what has been said, from the great leading Republican journals of the State of New York, it might well be supposed that Senators on this side of the Chamber would desire at least a brief moment of examination before they concluded to take Senators from a Legislature one member of which stands indicted for bribing another in reference to the election of a Senator, and which attained to such ignoble reputation among the leading Republican journals of the State of New York as that it became the subject of reproach throughout the whole civilized world as to the corruption which stained that body. Perhaps we shall be pardoned even in this great exigency, for which we are not responsible and which has compelled the calling of this Senate together, if we should lend an attentive ear to the complaints that have been made by

the Republican party against the conduct of a Republican Legislature in New York. But the Senator from Vermont would crowd these credentials upon us and have these Senators admitted even when constitutional questions are urged in reference to the fact of their lawful election to this body. Why is this done unless the Senator desires to escape from the investigation which it may be necessary to institute and conduct, and to find a summary remedy for the evils and difficulties which have been brought upon the country solely by the action of the party which he leads so splendidly here?

I repeat, sir, we are not responsible for this called session of this body. I repeat, sir, that if Mr. Arthur had retired from that chair during the last extra session and after the Senators from New York had withdrawn, the country would not have been disturbed and burdened with the necessity of having this body called together now; and as to all of this anxiety and fear of whatever may follow, our garments are clean. You of the Republican Party are responsible for it.

Mr. BECK. Will the Senator from Alabama allow me a moment?

Mr. MORGAN. I will.

Mr. BECK. I wish to say one word, Mr. President, having the record now before me. Some stress seems to be now laid on the fact that we are exercising power when a Republican President is dead and a Republican Vice President has been called upon to fill his office: and it is said to be anomalous that in such a state of affairs we should seek to elect a Democrat as President pro tempore of the Senate. The record shows that on the 9th day of July, 1850, Gen. Taylor, who was elected as a Whig by over 140,000 popular majority, died and Millard Fillmore became President of the United States the same day. On the 11th of July, on motion of Mr. Dickinson, of New York, William R. King, of Alabama, a Democratic Senator, was elected President pro tempore and held until another Democratic President pro tempore was elected, so that where the death of a Whig President occurred and the Vice President assumed his place, the Senate having a Democratic majority filled its chair, as we propose to fill it now, by a Democratic President pro tempore.

Mr. EDMUNDS. Will the Senator from Alabama allow me a moment?

Mr. MORGAN. Certainly.

Mr. EDMUNDS. I thank my friend from Alabama for his courtesy. Will the Senator from Kentucky be kind enough to tell us whether on that occasion, the real division of parties being equal, the party that happened to have a technical majority on the morning of that day refused to admit three Senators with regular credentials in order to accomplish their purpose of electing Mr. King?

Mr. BECK. I will answer that. The Democratic Party has a majority to-day, not accidental, except as caused by the wrongful conduct of the then Vice President in failing to vacate his seat, and the foolish conduct of two Senators from New York in throwing up their credentials. [Applause in the galleries.] The legitimate majority caused by these follies proposes to execute the law.

The PRESIDING OFFICER. The Senator from Kentucky will suspend. The Chair takes occasion to warn the galleries that if there is another exhibition of approval or disapproval from them the Chair will take the responsibility of ordering the galleries to be cleared. The Senator from Kentucky will proceed.

Mr. BECK. Only one other word. Having that majority, as I said, the fact that the President is dead and that the Vice President is now acting as such makes it precisely a parallel case to what occurred in 1850. When Gen. Taylor died then Millard Fillmore became President, and the Democrats having a majority then, as we have it now, elected William R. King, of Alabama, President pro tempore, not for an hour, nor for a day, but President pro tempore, subject to the will of the Senate.

Mr. EDMUNDS. May I have the permission of my friend from Alabama to say a word?

Mr. MORGAN. Certainly.

Mr. EDMUNDS. I am not surprised at the manifestation of the galleries. It adds a certainly graceful keeping to the drama that goes on. To be sure, it is contrary to the rules of the Senate; but it is true that the rules of the Senate, its standing orders, require the Sergeant at Arms to arrest such persons and bring them before the Senate for punishment. But if the Senator says that two States in this Union are now, and I do not know but forever hereafter, to be excluded from representation because the Vice President of the United States in the opinion of that Senator has failed to do something that he ought to have done, or because some former Senators from the State of New York have resigned when they ought not to have resigned, it is not strange to me, as it

sometimes happened I believe in the Roman forum when causes of justice were being decided, that the populace should add their constitutional views to such an occasion and such an argument.

But are we to be told, sir, seriously that any want of proper conduct—and I am far from believing there was any although I know nothing about it, having been ill and absent at the time—in the Vice President of the United States, or supposing that the Senators from the State of New York betrayed their trust—and I have no right or authority or wish to express any opinion upon the subject; they certainly did not betray it for they had a right to surrender it; or suppose they did anything that was unfair and not right, is that a reason why the people of the great State of New York and under the Constitution the equally great State of Rhode Island, who fail to be represented for a different cause, are to be punished for that, and now when we have met as we are and their newly chosen representatives are here that you are to refuse to allow them to participate in our proceedings? My friend's case would have been a precedent, a bad one it is true, but it would have been a precedent if on that occasion to which he refers three Senators' credentials had been presented and the ruling majority had refused to allow them to be sworn until those who were in should have chosen a President pro tempore whom they hoped when the others did come in could not be ousted from his office. Then it would have been a case in point, not now.

Mr. MORGAN. Mr. President, I deny that this side of the Chamber have refused to admit Senators from New York or the Senator from Rhode Island said to be elected to this body. That subject has not been considered. If they have been denied admission into this body now, it is because the body is not in legal position to admit them. The officer prescribed by the law and the rule of the Senate is not yet in existence who has authority to admit them into office by administering to them the required oath of office. We follow the law and support and sustain it in its refusal to admit these gentlemen as Members of this body until they can come in regularly as all other Members of this body are required to do, and as, doubtless, the good of the country requires that they should do. Otherwise we should not find, as I have before observed, such stringent guards in the statutes and in the rules of the Senate restricting their induction into office. That is the fair statement of the situation so far as they are concerned.

I might retort upon the honorable Senator and say to him that he exhibits remarkable anxiety, and I think very great haste, in undertaking to sweep from the statute book laws that are binding upon us, and from the rules of the Senate rules which have been acted upon for many years here, in order that he may have some support in doing what? As far as I know, in bringing the Senate again into a disgraceful deadlock. Perhaps it might turn out otherwise; I venture no prediction upon that subject; but for nearly two months of this year we have found the Senate of the United States with equally divided parties unable to execute any of the business of the country because of such condition.

Mr. EDMUNDS. Will the Senator allow me to ask him why it was unable?

Mr. MORGAN. I think it was because the Senator from Vermont or those with whom he is acting, having first made an arrangement with a Senator elected as a Democrat and for the election of somebody to the minor offices of the Senate, concluded that it was the duty of the Republican party on that side by any means, whether sustained by law or morals it made no difference, to break down the party on this side and build up the party on that. That is my conviction about it. The Senator asks for an opinion.

Mr. EDMUNDS. The Senator will allow me to say that, according to the best of my knowledge, information, and belief, he is mistaken first as to his fact, as to any arrangement whatever. Second, if he will allow me to say it in his time, through his kindness, he is mistaken as to his second proposition that a deadlock was occasioned. The fact that the Senate failed to pass a particular resolution, which was a lawful and orderly one, grew out of the circumstance that a body of Senators in this Chamber—and 10 could have done it as well as 37—obstructed and prevented the Senate from coming to any vote upon it, as any Senators can do on this now from this time until December.

Mr. MORGAN. Educated to that particular science of tactics and strategy by some 10 or 12 days of obstruction in which the Senator from Vermont—not he, but his party in the Senate—led the way.

Mr. EDMUNDS. I think the Senator is again mistaken.

Mr. MORGAN. They set up a pretense of high moral, political, and constitutional duty for obstructing the proceedings of the Senate until men could be

elected by legislatures or appointed by governors, in order to fill up the Senate and create a majority of this body. Perhaps we might say that "honors were easy" on that occasion so far as the practice of the two parties in the Senate was concerned. The honorable Senator asked me why I had come to certain conclusions or made certain statements here, and in answer to that I stated my own convictions on the subject drawn from the facts as they presented themselves to my mind. Perhaps I am wrong; I hope that I am, but I do not believe it.

Now, Mr. President, I say that I could retort upon the honorable Senator from Vermont that he is pushing us to conclusions with extraordinary rapidity, not only at the expense of the law of the land and the rules of the Senate, but, as we fear very much, at the expense of real substantial justice to this body and to the country. These credentials have only been read this morning, and there is perhaps not a Senator here who has retained in his mind a thorough understanding of what they certify to. I dare say that the eye of a Democratic Senator has never rested upon the papers which have been presented. Certainly no opportunity of investigation whatever has been accorded to us. It has been intimated that not only frauds prevailed in the Legislature of New York, but it also has been strongly intimated and urged that there was a want of constitutional power in that legislature under the Constitution of the United States and of the State of New York to elect these Senators at the time they were elected. Are we to have no moment of time for the consideration of these grave questions, and are we to admit Senators here when, perchance, it may afterwards turn out that we violate the Constitution in admitting them, because they were not elected by bodies having authority to elect? Let us take matters a little more quietly, a little more sedately; let us observe the law of the land in the method of organizing this body, and we shall give to ourselves and to the country far more satisfaction than we should if from any motive, it makes no difference how good it might be, we should undertake to treat the laws on the statute book with disdainful and contemptuous scorn upon the idea that they were interrupting the Senate in the discharge of its duty.

One more word, Mr. Chairman. The amendment which is now pending proposes to limit the tenure of office of the President pro tempore to one day—to this day. If we have a right to prescribe that tenure by a resolution of the Senate to the office of President pro tempore of this body, we have an equal right to prescribe a year. Whenever you assume to yourselves the right and power to prescribe the tenure of that office you thereby assume the right to forestall the Senate in setting aside or disregarding the tenure which you have established by your resolution, so that it must follow legitimately and legally that if we can say that the President pro tempore to be elected shall be chosen only for a day we should have an equal right to say he should be chosen only for an hour, and an equal right to say that he should be chosen for a year, or during the whole presidential term of Mr. Arthur. And yet here stands the action of the Senate of the United States matured in its wisdom, and I believe taken from a report of a committee, the chairman of which was Hon. Oliver P. Morton, in which it was solemnly decided—the honorable Senator from Arkansas [Mr. Garland] read the resolution—that the office of President pro tempore of the Senate is always under the control of this body. Now, sir, when we have adopted this resolution, suppose this session lasts until midnight.

Mr. VEST. I think it was the Senator from Vermont who reported that resolution.

Mr. MORGAN. If so, the argument would be only the stronger.

Mr. EDMUNDS. My friend is mistaken. I think that resolution was reported from the Committee on Privileges and Elections, of which I was never a member to the best of my knowledge and belief.

Mr. MORGAN. That was my impression.

Mr. VEST. I think it came from the Judiciary Committee, of which the Senator was chairman.

Mr. EDMUNDS. Mr. Morton was never a member of the Judiciary Committee in my time.

Mr. VEST. It was a resolution of the Senator from Vermont, I think.

Mr. MORGAN. That resolution is just as thoroughly the law of this Senate as any resolution ever adopted.

Mr. EDMUNDS. There is no doubt of its correctness. It is perfectly clear.

Mr. MORGAN. And it subjects the office of President pro tempore of the Senate to the will and pleasure of the Senate at all times without exception. If, then,

we prescribe that the President of the Senate pro tempore to be elected to-day shall be elected only for this day, it must follow, as a matter of course, that, after that resolution has been adopted and has passed beyond the period of reconsideration, it must stand as the law of the Senate until it is repealed by some other resolution. So that the Senate of the United States is now called upon to violate its own solemn declaration, its own traditional policy, its own avowal of its right under the Constitution, and for this special occasion to limit itself to a particular line of action and the office of President pro tempore to a certain fixed tenure. The Senator from Vermont might do as has been heretofore done on one occasion, offer a resolution that the President pro tempore of the Senate shall be elected and take his seat for the purpose only of qualifying Senators by administering the oath to them. Perhaps the Senator from Vermont may yet come forward with an amendment of that kind. I do not know how far his genius and enterprise may lead him in arranging propositions for the purpose of defeating the law of the land and the rules of the Senate as they are laid down and prescribed in the book.

But we should have just as much right to say that the President pro tempore of the Senate should be chosen for the sole purpose of swearing in the Senators from New York and Rhode Island as we should have to say that he should be elected only for to-day. Suppose that after we had elected him for to-day the President of the United States should become disabled for the discharge of his duties, what would then be the condition of affairs? Perhaps, without the will of the three Senators who are not yet admitted, the gentleman whom we might select would become instantly the acting President of the United States, and that beyond the power of the Senate to undo him, because they had elected him for to-day and that means under the Constitution, as I construe it, for the full time until a President of the United States is elected or until the disability is removed.

Mr. EDMUNDS. That is not the law.

Mr. MORGAN. That is my view of the law in reference to the devolution of the office or the duties of the office of President of the United States upon the President pro tempore of the Senate.

Mr. Chairman, I would gladly yield to the other side of this Chamber the responsibility of what they now so urgently and so earnestly demand; I would gladly yield it, looking to the interests of the Democratic Party, and looking to the gratification of my own feelings; but, sir, we are here for the purpose of executing the laws of this land, and I do not understand that I have any authority otherwise than by the regular course of legislative proceedings to repeal and to nullify or annul those laws. While they stand on the statute book they must be followed by me.

Mr. VEST. Mr. President, I have no disposition to enter into a partisan discussion at any time, and especially at a time like the present. Certainly the question before us, however, presented by the Senator from Vermont, is one on which I think there need be very little debate. When that Senator uses the expression that the Democratic Party now seeks to take advantage of assassination I conceive it unworthy of discussion of this kind. I might say to that Senator that the blow which struck down the late President of the United States had no aspiration in it for Democratic success, but it was for a faction of the Republican Party. If there be responsibility, direct or indirect, it rests there and not on us. I charge it not, but I repeat that the intimation, the suspicion that the Democracy of this country have any thing else but tears to shed for that terrible event, and anything but execration for that miserable offender, is utterly unfounded and cruelly unjust.

But, Mr. President, we are told now, as the shadows of the immortal dead are invoked, that the Democratic Party seeks to exclude from the deliberations of this Hall two sovereign States of this Union without law and without excuse. I might again retort, when did the Republican Party learn to confine themselves within the letter of the law where partisan advantage was sought to be obtained? But, sir, I am willing to stand in the presence of the immortal dead and try this question. The Senator from Vermont has invoked the shade of my illustrious predecessor upon this floor, that gallant man who illustrated his valor and his fidelity to the American flag on many a bloody battle field—James Shields. I stand here and make my argument before his spirit and the other illustrious dead who are now with him in the land of shadows.

On the congressional records of this country are nine instances parallel with the case now before the Senate. I say now to the Senator from Vermont, and I challenge contradiction, that in some of these instances Senators from sover-

eign States were compelled to stand outside of this Chamber while a President pro tempore was elected in order to administer to them the oath. I challenge contradiction from the whole Republican press of this country and the representatives of the Republican Party upon this floor when I state that it is shown by the records of the country that seven times out of nine the Senators here by an overwhelming majority decided that the new Senators before being sworn in should stand aside until a President pro tempore of this body was elected in order to administer to them the oath of office.

Mr. EDMUNDS. As my honorable friend challenges contradiction will he yield to me to make it.

Mr. VEST. Certainly.

Mr. EDMUNDS. Then I do contradict it, and I say there is no instance in the history of the country in which any Senator elect has been compelled to stand aside, as his phrase was, until a President pro tempore was elected. There is no instance until this one to-day in which when it was proposed to swear in the new Senators before a President pro tempore was elected, it was not done.

Mr. VEST. With all respect to the Senator from Vermont, that is an evasion of the question and of my argument. When Clay, Calhoun, Webster, and Benton stood upon this floor and saw 14 new Senators waiting at that door to be sworn in, and determined that they should not enter until a President pro tempore was elected, does the Senator pretend to say that they thought sovereign States were being excluded from their privileges upon this floor?

Mr. EDMUNDS. But, may I ask my friend, if he will allow me——

Mr. VEST. Certainly.

Mr. EDMUNDS. Did they determine that they should stand aside until then? Did a single Senator propose that they should be sworn in? Did they ask it themselves?

Mr. VEST. They did determine it by the most solemn official action, under their oaths of office.

Mr. EDMUNDS. Will the Senator kindly refer us to the instance?

Mr. VEST. I will, with pleasure, sir. Upon November 5, 1792, a President pro tempore was elected before new Senators were sworn in. Upon March 4, 1841, 14 new Senators stood outside of this Chamber until a President pro tempore was elected. Upon March 5, 1849, the same thing occurred; and upon March 4, 1857; upon March 4, 1863; upon March 5, 1877; upon March 4, 1837; and in only two instances in the history of this country has the oath of office ever been administered to new Senators by a Senator upon this floor instead of a President pro tempore.

Mr. EDMUNDS. If the Senator will permit me——

Mr. VEST. Certainly.

Mr. EDMUNDS. The Senator is perfectly correct in his history, but his statement, as it appears to me, with great respect, differed a little from the history. He said it was determined that they should not be sworn in until a President pro tempore was elected. I differ with him. No question was raised, no application was made, and I repeat, in the two instances that he names which are the only ones that exist where any Senator proposed that that should be done, inasmuch as parties stood so that it would make no difference, it was done.

Mr. VEST. Yet the Senator from Vermont assumes that Clay, Calhoun, Webster, Benton, Shields, Collamer, the great constitutional lawyers of that day, the defenders of popular rights and the sovereignty of States, were ignorant of the rights of Senators and the laws of the land. Sir, I deny it in defense of the memory of these great men. I say no man raised the question until 1853. The act of Congress was passed June 1, 1789; and the precedents are unbroken down to 1853; and I make the statement now in regard to that case to relieve the conscience of the Senator from Vermont. On December 20, 1852, David R. Atchison, of the State of Missouri, was elected President pro tempore of the Senate in place of William R. King, the President pro tempore at that time of the Senate, who resigned and went to Cuba on account of ill health. At the succeeding session of the Senate in March, 1853, the question was mooted whether Mr. Atchison continued to be President pro tempore of the Senate, that session having expired, or whether he was out of office by virtue of the expiration of the session. Some of the best lawyers then upon this floor and in the Union held to the opinion, as the Senator from Vermont very well knows, that with the expiration of the session the incumbent of the office of President pro tempore went out of office. Mr. Atchison, in view of this extraordinary contingency and this novel question, submitted, as he should

have done in all delicacy and fairness, the question to his brother Senators. I know from information derived from him (for in the providence of God he is yet an honored citizen of the State of Missouri) that his motive was in delicacy and fairness to ascertain beyond any question what the real legal status of the case was at that time. A compromise was the result, a compromise by which it was determined, by general and universal consent, that the oldest Senator should swear in the new Senators. That is the whole of it, and that is the instance which the Senator from Vermont invokes here to-day to break down the law of Congress, the rule of the Senate, and the unbroken precedents of this country since 1792.

Sir, we can afford to submit any such case to the people of these United States. We can afford to go to the country and let them say whether the Democratic Party seeks arbitrarily to wrest power and to rob sovereign States of their equal rights under the Constitution.

Mr. President, if the Democratic Party were the party of vandals and robbers described on this floor, where would be the majority of the Senate to-day? Where would be the power accidentally now in the hands of the Senator from Virginia [Mr. Mahone] if eight Democrats upon this side of the Chamber had not been actuated by their own conscientious convictions against partisan policy, against spoils, against plunder, when they had beyond question the undisputed majority on this floor? Yet in the very teeth of that action of the Democrats, when we had eight majority and gave up the supremacy in this Chamber because eight of us—not myself but eight others—believed the Constitution and the law required the keeping of the Senator from Louisiana [Mr. Kellogg] the sitting member now upon this floor, we are taunted with being a party of vandals, spoliators, and robbers, who seek to get all they can and hold it afterwards without law and without right.

At the last session of the Senate if we heard one thing more than any other, and from high and distinguished authority, it was that the voice of a constitutional majority is the voice of God. Sir, I invoke the voice of the Deity to-day. I invoke the dogma announced then by the Republican party upon this floor. Where is "the constitutional majority"? It happens to be with the Democratic Party, but it is hardly a divine utterance, I take it now. By a party movement of a portion of the Republican Party, and by the act of Providence which struck down the generous and brave Senator from Rhode Island, it happens, without any act on our part, that we to-day hold the majority under the Constitution. In the debate in the Forty-fourth Congress, upon the very question which has been alluded to to-day, whether the President pro tempore is removable at the option of the Senate, the Senator from Vermont [Mr. Edmunds] gave us certain advice which I propose to follow. I read from an authority so distinguished and so disinterested. Said that Senator then:

"One fit occasion—"

For the election of a President pro tempore:

"One fit occasion would be the absence of the President pro tempore. Another fit occasion might be his becoming unfit to discharge the duties of his office. Another fit occasion might be as I should say instead of being contrary to propriety, in all propriety the case that was mentioned the day before yesterday, when the parties of this body being responsible for the exercise of governmental powers and for the course of legislation should change; and when parties should change and one party should find itself brought into power with a President pro tempore of the other party in the chair, exercising the great powers that the President of the Senate does exercise, I should say it would be the duty of that party, instead of a wrong, to change the President pro tempore, because he is the organ of the responsible body, and without his being in harmony with the political views of the gentlemen in the majority their will might often be frustrated. He appoints special committees; he does a thousand things which are of the greatest importance to the political interests of the country; and to say that one party may saddle another for the time being with a President pro tempore, and that that other party, when the times shall change, and they become responsible for the administration of affairs, can not oust him and have a presiding officer of their own, would, in my opinion, be contrary to the principles of republican government. A party can not get on that way, and it ought not to get on that way."

And I say "amen" to the declaration.

Mr. EDMUNDS. So do I.

Mr. VEST. Sir, if we are in the majority, even if for but 10 minutes, we are responsible, and it is our duty and our right under the Constitution and under the law to choose our own officers.

Mr. President, this is a mandatory statute so far as our duty here to-day is concerned. We seek to wrest nothing from the Republican Party; we seek simply to meet the responsibility placed upon us by the law of the land, the rule of the Senate, the public sentiment of the country, and as I honestly believe by the dictate of conscience and of duty.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Vermont [Mr. Edmunds] to the resolution of the Senator from Ohio [Mr. Pendleton], on which the yeas and nays have been ordered.

Mr. SAULSBURY. Let the amendment be reported.

The PRESIDING OFFICER. The Chief Clerk will report the amendment.

The CHIEF CLERK. At the end of the resolution it is proposed to add the words "for this day"; so as to read:

"*Resolved*, That Thomas F. Bayard, a Senator from the State of Delaware, is hereby chose President pro tempore of the Senate for this day."

The PRESIDING OFFICER. Is the Senate ready for the question upon the amendment?

The Chief Clerk proceeded to call the roll.

Mr. ANTHONY (when his name was called). Upon this question I am paired with the Senator from Delaware who sits nearest me [Mr. Bayard].

Mr. MCPHERSON (when his name was called). I am paired with my colleague [Mr. Sewell]. I make the statement once for all.

The roll call was concluded; and the result was announced—yeas 33, nays 34.

So the amendment was rejected.

The PRESIDING OFFICER. The question recurs on agreeing to the resolution proposed by the Senator from Ohio [Mr. Pendleton].

Mr. EDMUNDS. Mr. Chairman, the edict having been registered, in some other place, I fear, that these two States shall go unrepresented at this moment, and that the Senate by its present majority will proceed to elect a President pro tempore indefinitely, it is my next duty to move to strike out the name of Senator Bayard and insert the name of Senator Anthony; and so I move to strike out the words, "Thomas F. Bayard, a Senator from the State of Delaware," and insert the words, "Henry B. Anthony, a Senator from the State of Rhode Island and of Providence Plantations," to be exact about it; and on that I ask for the yeas and nays.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Vermont [Mr. Edmunds], upon which the yeas and nays are demanded.

The yeas and nays were ordered; and being taken, resulted--yeas 32, nays 34.

So the amendment was rejected.

The PRESIDING OFFICER. The question recurs on the resolution proposed by the Senator from Ohio [Mr. Pendleton].

Mr. EDMUNDS. On that I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted--yeas 34, nays 32.

So the resolution was agreed to.

The PRESIDING OFFICER. The Chair appoints the Senator from Rhode Island [Mr. Anthony] and the Senator from Ohio [Mr. Pendleton] to escort the President pro tempore of the Senate elect to the chair.

Mr. Bayard was escorted from his seat by Mr. Anthony and Mr. Pendleton, and upon taking the chair as President pro tempore of the Senate said:

Senators: I fully appreciate the honor paid me by this expression of your confidence, and in assuming the duties of President pro tempore of the Senate in obedience to law and in accordance with the rules of this body and vote of the majority, I should have greater misgivings of fulfilling acceptably the requirements of the post were it not for the assurance that so long as I shall continue to exercise its duties I shall receive your cooperation and friendly aid—which I now earnestly and confidently ask at your hands.

We are all painfully mindful of the unusual circumstances under which we meet, and of the National bereavement which has caused this special session of the Senate.

May it not be hoped that, touched by a sense of common sorrow and chastened by a grief that penetrates every household in our great family of States, our proceedings shall be marked by a spirit of concession and harmony—a generous consideration for mutual differences of opinion, a softening of partisan asperities, and a high intent to perform our duties in a manner responsive to the demands of the occasion and the best interests of our common country.

With such hopes and in such a spirit I now assume and shall endeavor to perform the duties of the high position to which your favor has assigned me.

Thursday, October 13, 1881 (Journal, pp. 14, 15).

Mr. Logan submitted the following resolution for consideration:

Resolved, That David Davis, a Senator from the State of Illinois, is hereby chosen President pro tempore of the Senate.

* * * * * * *

The Senate proceeded, by unanimous consent, to consider the resolution this day submitted by Mr. Logan, providing for the election of a President pro tempore of the Senate;

After debate,

On the question to agree to the resolution,

It was determined in the affirmative, { Yeas ---------- 36 / Nays ---------- 34

(Yeas and nays omitted.)

* * * * * * *

So it was

Resolved, That David Davis, a Senator from the State of Illinois, is hereby chosen President pro tempore of the Senate.

Thereupon Mr. Davis took the chair and addressed the Senate as follows:

SENATORS: The honor just conferred upon me comes, as the seat in this body which I now hold did, without the least expectation on my part, etc. * * * The Senate will please come to order.

(Congressional Record, pp. 519–521.)

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. PENDLETON. Mr. President, when the Senator from Illinois [Mr. Logan] offered his resolution for the election of a President pro tempore of the Senate, inasmuch as it was offered without previous notice, I objected to its immediate consideration. Since then, upon reflection and consultation with gentlemen upon this side of the Chamber, I have concluded to withdraw my objection to its immedate consideration, which I now do.

The PRESIDING OFFICER (Mr. Harris in the chair). The objection of the Senator from Ohio interposed to the resolution offered by the Senator from Illinois is withdrawn. Is there other objection to the present consideration of the resolution? The Chair hears none, and the resolution is before the Senate and will be read.

The Chief Clerk read as follows:

"*Resolved*, That David Davis, a Senator from the State of Illinois, is hereby chosen President pro tempore of the Senate."

The PRESIDING OFFICER. Is the Senate ready for the question upon agreeing to the resolution?

Mr. JONES of Florida. Mr. President, before this question is submitted to a vote of the Senate I for one wish to repeat a protest which I once made here on this subject by denying the power of the Senate to do this thing. I am not content to occupy my seat quietly and let this question pass by without saying a few words upon it.

It is true it may be said that this is no longer an open question, that a precedent was established in the Forty-fourth Congress by which the right of the Senate to change at will its presiding officer was affirmed. I hope that the action of the Senate at that time will not be considered as a precedent, because if there is one question upon which the great minds of this country were divided then it was this. We had an interesting debate upon it at one time and a good deal of light was shed.

Mr. President, Congress by an act passed in 1792 has declared that the presiding officer of the Senate shall succeed in a certain contingency to the office of President of the United States. The language of the Constitution does not say that the President pro tempore of the Senate is an officer of the Senate in the sense that the Sergeant at Arms or the Secretary or the Chief Clerk is.

It declares that the Senate shall have the power to elect its own officers, and a President pro tempore during the absence of the Vice President; and when a President pro tempore of the Senate is elected by that body during the absence of the Vice President, the Constitution, in my judgment, has fixed the tenure of his office. You have filled the vacancy which the organic law has provided for, and you have no power, in my judgment, to undo it.

It has been said here time and again on former occasions that we had the same power over our presiding officer that the House of Representatives has over its Speaker, and analogies from the English system have been presented. What is the rule in the British Parliament to-day? Has it ever been the rule there that when a speaker was elected he was regarded as holding his office at the will of the body? He holds his office during a Parliament, and no change of majority in the house has ever been claimed to possess the power to unseat him.

There is no fixed tenure to the office of Speaker of our House of Representatives; still I do not know an instance where he has been changed. But an act of Congress has cast an important duty in a certain contingency upon this officer of the Senate. Congress has declared that the President pro tempore of the Senate in the case of the death or resignation or inability of both the President and Vice President shall become President of the United States; and when the Vice President is called from his chair to the Executive Office, you are required to fill the vacancy thereby occasioned, which you have done in this case; but now you turn around a few days after you have taken this action required by the Constitution and propose to undo your own work. Where would this lead? What did the Constitution mean when it declared that the office should be cast upon the officer designated by law? It did not mean that in any case the Senate of the United States should engage in a wrangle over the presidential office; it did not mean that the office should be cast upon a particular Senator or a particular man, but it contemplated that if such an unfortunate contingency should arise the office would fall upon the officer that had been designated to fill the permanent vacancy previous to the contingency which made it necessary for him to go into the first office.

Now, I do not wish to add to anything I have said hitherto on this subject, but I wish to read what Mr. Seward said in his day upon this question. In 1854 Mr. Seward said:

"Before we proceed with this election I should like to have the views of Senators in regard to the effect of the appointment—whether it is to be an absolute appointment of a President pro tempore, and what the tenure of his office is to be. I will state very freely my own opinion in going into this election, and it is this: that there can be but one person at the same time holding the office of President pro tempore of the Senate of the United States, and that that person will hold his office until it shall again constitutionally become vacant; so that in the case of a vacancy occurring in the office of the President of the United States the person now to be chosen to fill the office of President pro tempore of the Senate would succeed to that high trust and become the Chief Executive Magistrate of the United States."

In my judgment a more unwise precedent, if precedent it is to be regarded, never was established by the Senate than when it declared that this body should have the power in case of anything unfortunately happening to the present incumbent of the Executive Office to enter into a contest for the Presidency of the United States. I shall do no more now than put on record my views as expressed to the Senate on the 10th of January, 1876.[1]

The PRESIDING OFFICER. Is the Senate ready for the question upon agreeing to the resolution of the Senator from Illinois?

Mr. LOGAN. I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. BAYARD (when his name was called). Mr. President, I propose to withhold my vote upon this question. I have never obtained office by my vote, and I shall never retain it by my own vote. I am glad the question is taken to-day.

Mr. HOAR (when the name of Mr. Dawes was called). My colleague [Mr. Dawes] is paired with the Senator from Virginia [Mr. Johnston].

Mr. RANSOM (when Mr. Johnston's name was called). It has already been stated, but I was requested by the Senator from Virginia [Mr. Johnston] to announce that he was paired with the Senator from Massachusetts [Mr. Dawes].

The roll call was concluded.

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[1] For remarks of Senator Jones, pp. 69, 70, 71, 72, 73.

Mr. PLATT. I desire to announce that I am paired with the Senator from Nevada [Mr. Fair].

The result was announced—yeas 36, nays 34.

The PRESIDING OFFICER. The resolution is agreed to. The Chair appoints the Senator from Delaware [Mr. Bayard] and the Senator from Rhode Island [Mr. Anthony] to escort the President pro tempore elect of the Senate to the chair.

Mr. Bayard and Mr. Anthony escorted Mr. Davis of Illinois to the chair.

Mr. Davis of Illinois, on taking the chair as President pro tempore, said:

Senators: The honor just conferred upon me comes as the seat in this body which I now hold did, without the least expectation on my part. If it carried any party obligation, I should be constrained to decline this high compliment. I do not accept it as a tribute to any personal merit, but rather as a recognition of the independent position which I have long occupied in the politics of the country.

I am profoundly grateful for this mark of confidence, and it shall be my endeavor, as it will be my duty, to administer the trust with impartiality and with entire fairness.

Being untrained in parliamentary practice I shall rely on the indulgence of the Senate in this respect, and hope for generous cooperation from all sides.

The Senate will please come to order.

FORTY-SEVENTH CONGRESS, FIRST SESSION.

Monday, December 5, 1881 (Journal, p. 30).

The Hon. David Davis, President pro tempore of the Senate, resumed the chair.

(There was no President pro tempore of the Senate elected during this entire session, except as stated below, the Vice President having been inaugurated President of the United States September 19, 1881, for the term ending March 3, 1885; but on Friday, June 2, 1882 (Journal, pp. 778–779), the following proceedings were had:)

The Acting Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S ROOM, *June 2, 1882.*

SIR: As I shall be absent at the opening of the session of the Senate this morning, under the provisions of Rule IV I name the Hon. John J. Ingalls, a Senator from the State of Kansas, to perform the duties of the Chair until the adjournment to-day.

DAVID DAVIS,
President pro tempore.

To the ACTING SECRETARY OF THE SENATE.

An objection having been raised to the power of the President pro tempore to designate such substitution,

On motion by Mr. Hoar that, by unanimous consent, the Hon. John J. Ingalls be declared Presiding Officer for the day,

After debate,

Mr. Garland submitted the following resolution in lieu of the motion submitted by Mr. Hoar:

Resolved, That the designation of Hon. J. J. Ingalls by the President pro tempore of the Senate to preside over the Senate for this day be affirmed and approved by the Senate.

Pending debate, * * *

The Senate adjourned until Monday next.

(See Congressional Record, pp. 4448–4454.)

FRIDAY, JUNE 2, 1882.

Prayer by the Chaplain, Rev. J. J. Bullock, D. D.

The Acting Secretary, (Francis E. Shober, Esq.) called the Senate to order and said:

The President of the Senate being absent, has addressed the following communication to the Acting Secretary, which he will read for the information of the Senate:

WASHINGTON, *June 2, 1882.*

SIR: As I shall be absent at the opening of the session of the Senate this morning, under the provisions of Rule 4 I name Hon. John J. Ingalls, a Senator from the State of Kansas, to perform the duties of the Chair until the adjournment to-day.

DAVID DAVIS,
President pro tempore.

To the ACTING SECRETARY OF THE SENATE.

Will the honorable Senator from Kansas take the chair?

Mr. MORGAN. Let the Acting Secretary read the rule.

Mr. VEST. Mr. Secretary, I raise the point that the President pro tempore of the Senate has no right to name any Senator to take the chair under the circumstances, and there must be an election by the Senate of a President pro tempore as the facts exist. By that of course the Senator from Kansas will understand that I make no personal objection to him, for my personal relations with him are of the kindest description, but I make this objection in view of the precedents as I understand them and of the law governing the action of the Senate in such a case.

Mr. MCMILLAN. Let the rule be read.

The ACTING SECRETARY. Rule 4 reads as follows:

"4. In the absence of the Vice President the Senate shall choose a President pro tempore, and the Presiding Officer shall have the right to name a Senator to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment."

The Acting Secretary would hold that under the terms of the letter the appointment extends but for the day.

Mr. VEST. Let me hear the letter again, please.

The Acting Secretary read as follows:

"As I shall be absent at the opening of the session of the Senate this morning, under the provisions of Rule 4 I name Hon. John J. Ingalls, a Senator from the State of Kansas, to perform the duties of the Chair until the adjournment to-day."

Mr. HOAR. Mr. Secretary, I move that by unanimous consent Hon. John J. Ingalls be declared Presiding Officer for the day.

Mr. GEORGE. I am willing to vote for that motion, but I do not think it is at all necessary. The power of the President of the Senate is clear under the rule.

Mr. HOAR. Mr. Secretary, it seems to me that under the rule the power to designate a Senator to perform the duties of the Chair must be exercised by the Presiding Officer when he is presiding in open Senate, and he can no more send by letter to the Secretary a designation of a person to take his place than he can send a ruling and have the business of the Senate go on while he is out of the chair, communicating with the body in writing.

Mr. VEST. Mr. Secretary, the Senator from Massachusetts has stated the case so well that I will not say a word. That is exactly my conclusion in regard to the power of the President pro tempore.

Mr. HOAR. That is the precedent of the Senate.

Mr. VEST. Yes, sir; that is the precedent of the Senate. I have sent for the precedents.

Mr. HOAR. I hope my motion will be adopted by unanimous consent. It will leave this question in abeyance. Nobody wants to raise the question now.

Mr. MORGAN. If the Senator from Massachusetts will modify his motion by striking out the words "for to-day," I shall not object to its being adopted by unanimous consent; but I do not believe we have the constitutional power to elect a President of the Senate for to-day.

Mr. HOAR. If we have a constitutional power to fill the place by a rule in the absence of the President pro tempore, certainly we have the constitutional power to elect for the day. There is no limit in the Constitution which deprives

the Senate of its right. I hope the Senator will not raise that point. This motion of mine leaves the whole question in abeyance, to be settled by the Senate some time when its chairs are full, when the matter is of some possible importance; but it is of no importance to anybody now.

Mr. BUTLER. I understand the motion of the Senator from Massachusetts to apply merely to to-day.

Mr. HOAR. That is all.

Mr. MCMILLAN. Mr. Secretary, I shall assent to the motion of the Senator from Massachusetts, but I do not wish to be precluded upon the point he has suggested. As I understand it, the President of the Senate communicates to the Acting Secretary that he makes this appointment.

Mr. HOAR. I will say to my friend that if he will let the motion be put and make the suggestion afterwards, it will preclude nobody. My motion was made so that it might not conclude either view of the question.

The ACTING SECRETARY. If the Senate desires it the Acting Secretary will read a precedent for this proceeding, which occurred in the Forty-sixth Congress, first session. The following record is from the Journal of the date of June 25, 1879:

"The Chief Clerk called the Senate to order and read the following letter:

"WEDNESDAY, *June 25, 1879.*

"SIR: I am prevented by illness from attending the Senate to-day; I therefore, in accordance with Rule 4, name Senator Eaton to perform the duties of the Chair until the adjournment to-day.

"Very respectfully, "A. G. THURMAN.

"To the SECRETARY OF THE SENATE.

"Whereupon,

"Mr. Eaton took the chair."

Mr. MORGAN. In that case no objection was made; no question was raised.

Mr. MCMILLAN. To whom was the note directed?

The ACTING SECRETARY. It was directed to the Chief Clerk.

Mr. HALE. There was no action of the Senate on that.

Mr. MORGAN. None whatever.

Mr. MCMILLAN. I yielded to the Senator from Massachusetts to have the motion put, and then I wished to make a suggestion.

Mr. RANSOM. I should like to hear the motion of the Senator from Massachusetts.

Mr. HOAR. My motion was that Hon. John J. Ingalls be declared Presiding Officer of the Senate for to-day, and I asked unanimous consent.

The ACTING SECRETARY. Is there objection to the motion of the Senator from Massachusetts?

Mr. MORGAN. Mr. Secretary, I would not think of raising a question of this sort for the purpose of making a point on the gentleman named; but, when we come to consider its constitutional bearing, it is very important indeed. I will suppose a case. The elected President pro tempore of the Senate has vacated his chair and his office by being absent. It has been uniformly held that a President of the Senate is elected only for the time that he is in attendance as President of the Senate, and that the Senate has perfect power to supplant him at any moment of time. These rulings of the Senate have not only been uniform, but they have been repeated time and again.

The object of that, at least one object, is to keep it always in the power of the Senate to designate a man by its action who by the laws of the United States would act as President of the United States in case of the death of the recent Vice President, who has become President of the United States. There is a vacancy to-day in the office of Vice President, as I hold it, and as I think the Senate has always understood it. There is no such officer as a Vice President of the United States now in the incumbency of that office; the office is simply vacant. We have designated a President pro tempore of the Senate who by his absence is as much out of that office this morning as if he had been supplanted by a vote of the Senate.

Suppose we should say that the honorable Senator from Kansas is elected by the Senate for to-day, and suppose between this hour and sunset some such misfortune should befall the President of the United States as we have had occasion to see has befallen Presidents, not only totally disabling him, but destroying instantaneously. Such things are not beyond the reach of our

contemplation surely, and they should not be beyond the reach of wise and discreet provision in our action.

If the honorable Senator from Kansas takes the position this morning as the chosen organ of the Senate to preside over it, he takes it with all of its legal and constitutional responsibilities, and he takes it not for to-day, but until the Senate shall exercise its pleasure to supplant him. I apprehend that if the honorable Senator from Kansas should be installed this morning as President of the Senate, and if during this day the duties, powers, and responsibilities of the office of President of the United States should devolve upon him, the Senate of the United States, after such devolution had taken place, would not have the power to remove him from the high trust which he would then possess in accordance with law.

Therefore the limitation we undertake to place upon the tenure of his office forestalls the Senate in two respects: First, it prevents us an hour hence or three hours hence from choosing another President of the Senate, which would be yielding a privilege that the Senate has claimed to itself and has settled by rules which, though not irrevocable, have so far grown into precedent that I suppose the Senate would scarcely revoke them.

Mr. LAPHAM. Will the Senator allow me to ask him a question?

Mr. MORGAN. Yes, sir.

Mr. LAPHAM. Has it not been decided already that the Senate has power at any time to change its Presiding Officer?

Mr. MORGAN. Very true; but shall the Senate pass a resolution that the honorable Senator shall have the tenure of his office for this day, and then repeal that resolution and pass another?

Mr. LAPHAM. The Senate could reconsider it and then elect another presiding officer, undoubtedly.

Mr. MORGAN. I do not know about reconsidering a matter of that kind after the duties of the office have devolved upon him by the act of God, I will say. There is the difficulty we may involve ourselves in.

I am perfectly willing, if the honorable Senator from Massachusetts will strike out the words "for to-day," to allow the honorable Senator from Kansas to be placed in the chair as President of the Senate. It may be that through some interposition of Providence the gentleman we have elected, and who is not here this morning, may not return to-morrow, or even in a week or a month, or perhaps forever. He may not return. We should find ourselves then entirely unencumbered, and to-morrow or at any moment of time, with the Senate in perfect organization, to be called and kept in order by the honorable Senator from Kansas, who would preside in the office of President of this body, we could proceed in a regular, orderly, systematic way to provide for any contingency that might happen of the kind I have suggested.

Mr. HALE. Will the Senator permit me to interrupt him to ask a question?

Mr. MORGAN. Certainly.

Mr. HALE. Does the Senator think there is the need here of any action whatever on the part of the Senate?

Mr. MORGAN. I do. I think it is indispensable.

Mr. HALE. Let the Chief Clerk read Rule 4, with the permission of the Senator from Alabama.

Mr. MORGAN. Certainly. He read it before the Senator from Maine came in.

The Acting Secretary read as follows:

"4. In the absence of the Vice President the Senate shall choose a President pro tempore; and the Presiding Officer shall have the right to name a Senator to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment."

Mr. HALE. I should like to ask the Senator from Alabama what force there is in the provision that the Presiding Officer may name a Senator to act, not to continue beyond adjournment, unless it is the absolute power resting in him to name an incumbent to the chair for a day? What force is there in the rule unless that is its force?

Mr. VEST. Will the Senator from Alabama permit me to reply to the Senator from Maine?

Mr. MORGAN. I will give way in a moment. The force is just this, Mr. Secretary: The rule says the Presiding Officer may name a Senator who shall hold the position, not beyond an adjournment. That of course can be done only by a presiding officer. Who is a presiding officer? It is not an officer who has heretofore been chosen to preside, but one who is actually presiding. The

Secretary of the Senate is not the Presiding Officer of the body. He can not conduct any of its legislative business at all. He can merely call the Senate to order and bring to its attention its own condition. He can do nothing else except to control the action of the Senate by receiving and having motions acted upon until that difficulty is removed and that condition is changed. The rule to which the honorable Senator refers was mentioned before he arrived in the Senate this morning, and the honorable Senator from Massachusetts made a suggestion which I believe entirely answered that point.

Mr. HALE. I heard that.

Mr. MORGAN. I thought it entirely answered the proposition made by the Senator from Maine.

Mr. HALE. Is not the precedent which has been read in the direction of admitting the power of the Presiding Officer to make his wishes known and his direction known, although not in the chair? Was not that the force of the precedent?

Mr. MORGAN. That precedent has no effect at all except as the unanimous consent of the Senate. No objection was made. When Mr. Thurman turned over into the hands of Mr. Eaton the Presidency of the Senate no objection was made. It was done, therefore, by unanimous consent. Of course we can do anything by unanimous consent. This morning the question is raised.

Mr. VEST. Will the Senator from Alabama permit me for a second to answer the Senator from Maine?

Mr. MORGAN. I yield, of course.

Mr. VEST. Mr. Secretary, I wish to say to the Senate that I raised this point in no hypercritical spirit, and with no personal objection to the distinguished Senator from Kansas; but I find a precedent which should have some weight in the Senate and which answers exactly the question put by the Senator from Maine.

"IN SENATE.

"*Monday, June 9, 1856.*

* * * * * * *

"The Secretary read the following note from the President of the Senate:

"JUNE 9, 1856.

"SIR: Do me the favor to take the chair to-day.

"Yours, truly,

"J. D. BRIGHT.

"Hon. CHARLES E. STUART.

"Mr. Stuart took the chair and called the Senate to order.

"The Journal of Thursday was read and approved.

"APPOINTMENT TO THE CHAIR.

"Mr. CRITTENDEN. Mr. President, I am sure the suggestion I am now about to make can be ascribed by no one to any personal considerations. It would give me great pleasure to vote for placing you in that chair, sir, but I object to the authority by which you now occupy it. I deny that the President of the Senate has any right, by letter, to delegate his power to preside over this body. A similar instance occurred once before in the Senate—I do not know whether any vote was taken upon it, but it was acquiesced in and admitted on all sides that he had not this power. Mr. Atchison, a particular friend of mine, then occupied the chair. It is a small affair now, but I think the Senate ought to have a little care of its own rights.

"I shall not take up the time of the Senate in discussing this question. I do not believe that the President of the Senate has any power, except he be present here and authorizes, while he is present, another member, for his personal relief, to act in his place for the moment; but to depute from day to day is more than he has a right to do. I think this is so plain and obvious that no argument is necessary on the subject. It would give me great pleasure to vote for you, sir, but I object to your presiding in that chair under the authority by which you are now sitting in it.

"Mr. CLAYTON. I think this question is an important one. There is no man here whom I should be better pleased to see in the chair than yourself, sir, and I would vote for you with great pleasure, but I am very well satisfied that you have no authority, as derived from the President of this body, to occupy the

chair. As remarked by the Senator from Kentucky, I think the President of the Senate can not confer the power. (Congressional Globe, Thirty-fourth Congress, first session, pt. 2, pp. 1368–1369.)"

The Presiding Officer then caused the rule to be read, the rule which the Senator from Maine has invoked to-day, and it was then exactly as it is now.

Mr. McMillan. Will the Senator read that rule?

Mr. Vest. The rule provided that—

"The Vice President or the President of the Senate pro tempore shall have the right to name a member to perform the duties of the chair, but such substitution shall not extend beyond an adjournment."

Mr. Morgan. That is stronger than the rule we have now.

Mr. Vest. That is the same rule substantially if not literally. After reading the rule, the Presiding Officer said:

"When the President of the Senate left the city, he left with me several appointments written by himself, which were to be presented each day, with a note stating to me how long he should be gone, and requesting me to present these notes to the Senate and occupy the chair agreeably to his request. I shall certainly be willing to take any course that is agreeable to the Senate.

"Mr. Butler. Mr. President, I recollect very well when this question arose before. I believe it was on the second day after I took my seat in the Senate; and I shall never forget the discussion which took place upon it in the course of the proceedings that followed. Mr. Dallas, then Vice President, was sick or so unwell that he could not attend here in person. He wrote a note to Mr. Atchison, requesting him to take the chair while he was in the city. Some contended that, constructively, he was so far present in the Senate that he could call a member to the chair within the meaning of the rule which you have just read."

That is, that he was so far constructively in the Senate. Nobody pretended then that the rule meant that he could depute a Member by telegram or letter. That is an innovation which we hear of to-day, or rather when it was exercised here it was by general consent, nobody raising the question in the case of Mr. Eaton by Judge Thurman, and that is the only case. Mr. Butler continued:

"A different view was taken by many. I recollect that Mr. Benton, of Missouri, then one of the oldest parliamentarians in the Senate, said that he agreed entirely with the proposition which had been suggested that there is no such thing as the appointment of a member to occupy the chair, except by the Vice President or the President pro tempore in the Senate house itself, and that the substitution continued no longer than the adjournment of the Senate.

"The delegation of authority, in writing, by the President of the Senate when he is not here is not what was contemplated by the rule, and it might lead, as you, sir, will readily see, to great abuse. I recollect the course of proceedings on the occasion to which I have alluded was unanimously to elect Gen. Atchison to the chair.

"Mr. Clayton. Make that motion now.

"Mr. Butler. I move that the honorable gentleman who now occupies the chair be unanimously elected President pro tempore.

"Mr. Clayton. I second the motion.

"Mr. Douglas. Let the Secretary put the question.

"Mr. Cass rose at his desk and said: 'I will put the question. It is moved that my colleague [Mr. Stuart] be appointed to occupy temporarily the chair of the President of the Senate.'

"The motion was unanimously agreed to. (Ibid., p. 1369.)"

Mr. Butler. Does not my friend from Missouri think that the difficulty is obviated and avoided by the motion of the Senator from Massachusetts?

Mr. Vest. I have no objection to that motion; I have no objection to electing the Senator from Kansas, but I simply made the point because I protest against the power of the President pro tempore to delegate any Senator here by telegram or letter to take the place which can only be taken under such circumstances by the election of the Senate itself.

Mr. McMillan. Mr. Secretary, it seems to me under the terms of the rule the Presiding Officer of the Senate has pursued a proper course in designating a Senator to occupy the chair during the day. The rule is as follows:

"4. In the absence of the Vice President, the Senate shall choose a President pro tempore, and the Presiding Officer shall have the right to name a Senator to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment."

In the absence of the Vice President the Senate has already designated or chosen a President pro tempore. The President pro tempore is absent, and he has made the designation which has been communicated to the Senate. It is claimed that the term "Presiding Officer" imports the presence of the officer in the Senate. I do not think so. The term "Presiding Officer" as used in this rule is evidently used for the purpose of embracing either the Vice President or a President pro tempore of the Senate.

Mr. HALE. If the Senator will allow me, right in line with his suggestion there I wish to remark that the original rule, which has been read by the Senator from Missouri in terms instead of using the words "Presiding Officer," declared that the Vice President or the President pro tempore should have the right of designation; so that, as the Senator from Minnesota says, this is simply using that phrase or designation instead of the other two.

Mr. MCMILLAN. The language of the rule is:

"In the absence of the Vice President the Senate shall choose a President pro tempore, and the Presiding Officer shall have the right to name—"

Whether it is the Vice President presiding in the Senate or a President pro tempore elected in the absence of the Vice President.

Mr. HOAR. The language is "Presiding Officer." Do not the rules distinguish between his office as President pro tempore and his actual exercise of the function when they go on to say that the officer presiding shall make this substitution?

Mr. MCMILLAN. I do not think so; because the Vice President is the President of the Senate whether the Senate is in session or not. So the Presiding Officer, if he is President pro tempore, is the Presiding Officer of the Senate whether he is in the Senate or out of it.

Mr. HOAR. May I inquire of my friend if he is of opinion that the Vice President of the United States or the President pro tempore of the Senate, the office of Vice President being vacant, may remain at a distance from the seat of Government and from day to day make each day a repeated substitution, so that the Senate shall never fill his place under the rule?

Mr. MCMILLAN. The Senate can at any time elect a Presiding Officer in the absence of the President pro tempore of the Senate.

Mr. CAMERON of Wisconsin. Or in his presence.

Mr. MCMILLAN. Or in the presence of the Presiding Officer.

Mr. CAMERON of Wisconsin. Is he the Presiding Officer when he is not here? That is the question.

Mr. MCMILLAN. He is the Presiding Officer within the meaning of this rule.

Mr. CAMERON of Wisconsin. Does he not vacate his office when he steps down from the chair and leaves it vacant? The Senate assembled this morning at 12 o'clock, and the Presiding Officer, so called, was not present.

Mr. HOAR. Will my friend allow me to trespass on his patience once more by another question?

Mr. RANSOM. Mr. Secretary——

Mr. HOAR. Allow me just to put this question.

Mr. RANSOM. Mr. Secretary, I wish simply to make one suggestion to my friend from Massachusetts. I observe that the Secretary is, very properly perhaps but rather too delicately, unwilling to say a word to Senators about the order in which they speak. Discovering five gentlemen on the floor at one time, speaking or trying to speak, I thought I would call the attention of the Senate to it.

Mr. HOAR. I have the consent of my honorable friend from Minnesota to ask him this question. Suppose Hon. David Davis, President pro tempore, is in the Vice President's room and has called for the day, under this rule, the honorable Senator from Kansas [Mr. Ingalls] to the chair, who is in the chair; which is the Presiding Officer at that moment under this rule, the gentleman who is in the room out there or the gentleman presiding in the Senate here whom our reports and the Journal speak of as "Presiding Officer?"

Mr. MCMILLAN. The officer occupying the chair is presiding in the Senate.

Mr. HOAR. The Presiding Officer?

Mr. MCMILLAN. But the Presiding Officer under this rule is either——

Mr. BLAIR. If the Senator will examine the rule——

Mr. MCMILLAN. If the Senator will allow me to finish my remarks he will understand me; otherwise I am at a loss to see how he can understand what I mean. I ask here——

Mr. BLAIR. My interruption was to help the Senator.

Mr. McMillan. The Vice President is President of the Senate, and in his absence a President pro tempore is elected. That has been done. The President pro tempore of the Senate is absent and has designated a Senator to occupy the chair during the day. The absent President pro tempore is the Presiding Officer of the Senate within the meaning of Rule 4, which declares that—

"The Presiding Officer shall have the right to name a Senator to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment."

It is evident that the President pro tempore is embraced in the term "Presiding Officer," because the preceding portion of the rule declares that, in the absence of the Vice President, the Senate shall choose a President pro tempore. There is no restriction in this rule upon the power of the Senate to elect a President pro tempore of the Senate in the absence of the person who has been designated to that position by the Senate at a previous time; but the question is whether or not the President pro tempore of the Senate can designate a Member of the Senate to act during the day and during his absence.

Now, the Presiding Officer of the Senate has communicated to the Senate in an authentic manner his designation of the Senator from Kansas to preside. The Acting Secretary of the Senate communicates to the Senate the designation by the Presiding Officer. We have it in an authentic form. We can receive that designation and recognize the Senator from Kansas as the officer to preside during the day. I do not believe it is necessary for the Senate to elect the Senator from Kansas as President pro tempore of the Senate, although the Senate has that power if it determines to do it.

Mr. Ferry. Mr. Secretary, the object of this rule is to provide for a vacancy in the chair. The rule is explicit that in the absence of the Vice President, who by the Constitution is the Presiding Officer of this body, the body itself shall elect a President pro tempore. That has been done by the Senate. As we have no Vice President, the President of the Senate is President pro tempore of this body and the acting Vice President of the United States. The President pro tempore, without appearing here this morning, has designated the senior Senator from Kansas to preside for this day. This mode of designation without being present to designate has not been the practice of the Senate.

Mr. McMillan. There is a precedent for it.

Mr. Ferry. The Presiding Officer should have been present here in order to designate for the day. If it were otherwise, the President pro tempore of the Senate could designate different Senators from day to day and absent himself from day to day during the session of the Senate. Designation when the President pro tempore is present has been the general practice, with perhaps a single exception to which the Senator from Minnesota has referred; I think the safest course is so to act that this occurrence shall not be regarded as a precedent. I trust that the proposition made by the Senator from Massachusetts that the Senate by unanimous consent will affirm the designation for the day of the senior Senator from Kansas——

Mr. Hoar. Declare him.

Mr. Ferry. More strictly assent or acquiesce, inasmuch as he has been indicated by the Presiding Officer of this body, and I am very glad that he has done so. My exception looks to the mode, not the selection, and it will be my pleasure to vote in acquiescing in his being the Presiding Officer for the day.

But I beg Senators to observe that it is setting a questionable precedent for any Presiding Officer at his convenience and pleasure to designate while absent different Senators to preside from day to day over this body. The power lies with the Senate to-day to choose whom it pleases to preside, even after the indication by the Presiding Officer. By unanimous consent, however, or even by a majority of the Senate, any designation made may be assented to. I trust that the proposition made by the Senator from Massachusetts will be acceded to without division.

Mr. Logan. Mr. Secretary, I do not claim to have very great knowledge of the rules, for all Senators observe that I pay about as little attention to rules as anybody in the Senate. Everyone will concede that, I presume; but when a question arises as to the construction of a rule I claim the right to have my views about it the same as anybody else. I always accord to the Senator from Michigan [Mr. Ferry] very great knowledge in reference to rules. At the same time, however, he may be mistaken as other men are at times.

Now, I will put this proposition to him: If his construction of this rule is correct, in what position are we placed? If we are to elect the Senator from

Kansas or any other Senator to preside, it is an election of a Presiding Officer in place of the acting Vice President. That election, then, substitutes this party elected to-day for the party that was elected, to wit, David Davis. Then, on his return to the Senate Chamber the Senate has either got to elect him again and turn this man out of the chair or permit this Senator elected to-day to remain the Presiding Officer of the Senate. That is exactly the result of the argument of the Senator from Michigan.

Mr. FERRY. If the Senator from Illinois will allow me, the rule, I believe, authorizes the Presiding Officer of the Senate to designate some person to preside in his absence. Now, the practice has been that the Presiding Officer shall appear here in the morning and designate for the day. That is the ground which I take. Now, I say to the Senator from Illinois that it lies with the body to say whether this Senator or that one shall preside. If the President pro tempore of the Senate, Judge Davis, the colleague of the Senator, were here to-day, it would be competent even for the Senate to elect some other Senator to preside by displacing him as he displaced the senior Senator from Delaware. So that the controlling power lies with the Senate. By the rule it is not prescribed how the designation shall be made, whether by writing or in what other manner, but the safety and regularity of tenure of the Chair is what I am addressing myself to, fearing that if we concede it regular in this case we must concede it in all cases.

Mr. LOGAN. No, sir; the Senator is certainly mistaken again, and I will show why. The power of the Senate is not to designate. The power of the Senate under the rule is to elect. The power to designate lies with the Presiding Officer. There is the distinction. "In the absence of the Vice President the Senate shall choose a President pro tempore." That is, the Senate shall elect. In the absence of the Presiding Officer, however, for the term of one day he shall designate. There is the distinction One is an election and the other a designation by the Vice President or the Acting Vice President, the Presiding Officer of the Senate.

Now let me put a case. Suppose the Presiding Officer of the Senate, Senator Davis, should be taken very ill or should have been taken very ill last night so as to be confined to his chamber after the Senate adjourned yesterday. Will the Senator pretend to say that under this rule he could not designate some one to preside in the Senate to-day until the Senate's adjournment? It seems to me that that is the very object of the rule; that it is to fill the chair in cases of that kind where the Presiding Officer may be taken suddenly ill or be suddenly required to be absent, so that then he may designate a temporary occupant of the chair and save the Senate the trouble of going into an election. It seems to me that the true construction of this rule is to say that in the absence of the Vice President the Senate may elect a Presiding Officer, and as it has been said here, the Senate may elect one every day if they choose, but when they elect him he becomes the Presiding Officer, and the officer prior to him passes out from the chair as the Presiding Officer of the Senate. The designation merely for a day does not affect the Presiding Officer; it merely substitutes one to preside; but an election affects him, turns him out, and substitutes another. That is exactly in my judgment the rule as it is written here, and as it seems to me it ought to be understood by the Senate.

Mr. FERRY. Then, if the Senator will allow me, taking it for granted, as I may do, that the Senator is correct and I am wrong, inasmuch as there is a difference of opinion upon that point whether the Presiding Officer can from day to day by being absent designate one after another Senator, and so go through the whole body, and throughout a session, would it not be wise by unanimous consent—as I take it there is no exception to be taken to the designation of the Presiding Officer—to assent to the proposition made by the Senator from Massachusetts, that the Senate consent to the designation made by the Presiding Officer, and that will leave no question to plague us hereafter.

Mr. LOGAN. I have no objection to affirming what the Presiding Officer has done provided it is affirmed to remain as his act, but if it is denied by the Senate as his act it is the ousting of the Presiding Officer and electing another in his place.

Mr. FERRY. Can it possibly be a denial of his act or a repudiation of it? It is simply an affirmation of it.

Mr. LOGAN. If it goes on the record as an affirmation of his act that is a different thing from an election.

Mr. MCMILLAN. The Senator will permit me to make a single statement. If the Senate will just permit the Senator from Kansas to take his seat in the chair, that will be an assent.

Mr. LOGAN. That is an affirmation of it.

Mr. FERRY. That is the proposition, Mr. Secretary, of the Senator from Massachusetts.

Mr. LOGAN. Very well. I presume that the Senate does not wish to go through the form of electing a Presiding Officer to-day and then when Senator Davis returns, if he is satisfactory to the Senate, to go through the form of electing him again. Certainly the rule never intended any such thing as that. That is exactly the result of the proposition that has been suggested here in reference to the election or selection of a Presiding Officer, and I hope it will not be done.

Mr. BECK. I wish to suggest that waiving all question of affirmation or disaffirmation, finding ourselves without a Presiding Officer, we by unanimous consent allow the Senator from Kansas to act as Presiding Officer to-day, and then look into the precedents.

Mr. HALE. Mr. Secretary, I take it the only difficulty is what has just been alluded to by the Senator from Illinois as to whether this should be simply by affirming the right of the Acting Vice President to select or by asserting our right.

Mr. BECK. Let us waive all that by unanimous consent and have the Senator from Kansas preside.

Mr. HALE. Mr. Secretary, I want to say only one word. There is nothing either in the old rule of the Senate or the present rule that limits the right of the President pro tempore to select a person to preside in the Senate for a day, to his being in the chair. The old rule in terms provides this:

"The Vice President or the President of the Senate pro tempore shall have the right to name a Member to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment."

There nothing is said about "the Presiding Officer" but it is the Vice President or the President pro tempore who is to make the designation. Now, the new rule for convenience' sake says:

"In the absence of the Vice President, the Senate shall choose a President pro tempore; and the Presiding Officer shall have the right to name a Senator to perform the duties of the Chair."

Simply using that term "Presiding Officer" instead of repeating over and over again "Vice President or President pro tempore." The selection of that phrase does not carry with it in any way the idea that he must be sitting in the chair and must there designate and must be actually presiding, but it recognizes that the Vice President or the President pro tempore is the Presiding Officer of this body; and if anybody had asked last night who is the Presiding Officer of the Senate, the answer would be the Senator from Illinois. So there is nothing in this selection as has been attempted to be shown here of the term "Presiding Officer," indicating that it only applies to his sitting in the chair.

No longer ago than the last Congress, as good a parliamentarian and as sound and careful a constitutional lawyer and one who was as careful not to encroach and make bad precedents as the late Senator from Ohio, Judge Thurman, without any hesitation exercised this right as it had always been exercised, and nobody objected; and in 1880 I find another instance showing how this has gone along by common consent, nobody raising any objection. I read from the Journal.

"*Thursday, March 11, 1880.*

"The Secretary called the Senate to order and read the following letter:

"VICE PRESIDENT'S CHAMBER,
"*Washington, D. C., March 11, 1880.*

"SIR: As I shall be absent at the opening of the session of the Senate this morning, under the provisions of Rule 4 I name Hon. George F. Edmunds, a Senator from the State of Vermont, to perform the duties of the Chair until the adjournment to-day.

"WILLIAM A. WHEELER,
"*Vice President.*

"To the SECRETARY OF THE SENATE."

Dated "Vice President's Chamber," out of the chair—

"Whereupon,

"Mr. Edmunds took the chair."

There was the Vice President, who was the Presiding Officer of the Senate, out of the chair, in his room exercising this power given to him in terms and nobody objected, as nobody objected to Judge Thurman doing it; and to me

the selection of those words carries nothing whatever. You can not find in this rule that it is limited to the act of the President in the chair. If it were so intended, why did it not say "while in the chair he shall select?" To me it is very plain indeed.

Mr. FERRY. Mr. Secretary, the Senator from Maine has properly stated the case, but, as I understand, there has been an objection interposed this morning to the designation made by the President pro tempore of the Senate. That being the case, a single objection makes it necessary that there should be an assent or dissent by a vote of the Senate on the designation made by the President pro tempore of the Senate. If there had been no objection raised, the senior Senator from Kansas would have occupied the chair and gone on with the business of the Senate until adjournment; but an objection having been made in the nature of calling the attention of the Senate to the manner in which this designation had been made, it is my judgment that the Senate should either acquiesce in the designation of the President pro tempore without objection and allow the Senator from Kansas to occupy the chair to-day or adjourn. To choose or elect by the vote of the Senate the Senator designated by the President pro tempore is virtually displacing the President pro tempore of this body, so that when he reappears in the Senate to regain his present place as Presiding Officer of the Senate it would be necessary to reelect him to his distinguished place. I can not by word or vote assent to any precedent which will involve such grave steps in the proceedings and integrity of this Senate.

Mr. MORGAN. Mr. Secretary, objection was made that the President of the Senate had no right to designate a Member from this body to preside over it to-day or at any time. The ground of the objection as taken was that if he had the right to designate an officer to preside for to-day he had the right to designate him to preside as long as he chose. Then the honorable Senator from Massachusetts offered a motion or resolution——

Mr. HOAR. No, sir; I asked unanimous consent, to be precise.

Mr. MORGAN. Then I was mistaken; I thought it was a resolution, which I proposed to amend by striking out the words "for to-day."

I am entirely willing that the Senate should not commit itself upon this question one way or another by fixing a tenure of office for the gentleman who may preside to-day. I do not see, however, in the absence of the President pro tempore, and without any knowledge on the part of the Senate, I believe, of why he is absent, and whether he intends to remain for all time or not—we know nothing about that—why it is that we should elect a President of the Senate and undertake to prescribe to him in the resolution of election any tenure of office. I have understood that the Senate had come to a definite conclusion, after very careful examination, that there was no tenure of office attached to the office of President of the Senate. Mr. Morton's report, which I hold in my hand, concludes with a declaration:

"That the office of President pro tempore is held at the pleasure of the Senate."

If it is held at the pleasure of the Senate for one day, it may be held at its pleasure for one hour. The point that I desired to avoid was this: We have not taken any "bond of fate" that our Presidents are not going to die. Unfortunately we can not do that. Suppose that Mr. Arthur should be stricken to-day with death, what would be the condition of affairs in this country, with the honorable Senator from Kansas elected for to-day, with a tenure of office that exists through this day, and Mr. Davis heretofore elected President pro tempore of the Senate? Who would be the acting President of the United States in such a condition of affairs?

Sir, I want to avoid questions of that kind, and merely for the purpose of allowing the Senate to progress with its business. It is not our duty, I think, nor is it wise on our part to allow questions of this kind to straggle in the midst of the policy of this great country. Let us choose a President of the Senate. I have no objection to the honorable Senator from Kansas taking the chair as President of the Senate. I would vote for him to do it, and to-morrow, or whenever it may be, if he should choose to resign after the reappearance of Mr. Davis, of Illinois, I would vote for Mr. Davis again. My purpose is not to raise any question that might have a political bearing or any other bearing, but my purpose is to avoid a complication which might be absolutely disastrous to the welfare of this country and might involve us in a revolution before the sun sets upon the land.

Mr. HALE. Will the Senator allow me to ask him a question?

Mr. MORGAN. Yes.

Mr. HALE. Does not the Senator think it would give rise to much more complication and much more dangerous and alarming questions if the Senate undertook now to intervene by a motion than to let this selection be made by the President pro tempore under the authority that has been recognized for years?

Mr. MORGAN. I really do not, because the President pro tempore has no constitutional power to delegate his office, and if the honorable Senator from Kansas should hold his office as President of the Senate by a delegation from the President pro tempore heretofore elected by this body, he would hold no constitutional office, and when it should fall out that the President of the United States had passed away, and if it should also fall out that the President pro tempore of the Senate should pass away, then we should have a man in there that had been appointed by Mr. Davis and not chosen by the Senate. That would be the difficulty. Let the Senate of the United States do its duty under these circumstances without respect to anything but its constitutional ties. Then we shall always be safe; but unless we get our minds made up to that we are never safe.

Mr. Secretary, I look upon this with extreme alarm, not because I anticipate any actual danger to arise, but I see the opening of difficulty; and should not this admonish us that we should take up the laws on this subject and have some better provision than we have now in reference to the devolution of the office of President of the United States upon the next in succession?

Mr. BUTLER. Mr. Secretary, will the Senator from Alabama yield to me for a moment? In order to give a chance for consultation as to what Senators had better do, I think the shortest way out of the difficulty is by an adjournment. We have power to adjourn certainly, and therefore, if the Senator will yield for that purpose, I will move an adjournment.

Mr. MORGAN. I will not yield now for a motion to adjourn, but I may do so in a few moments. Perhaps other Senators desire to express their opinions about this very important question, for it is a very important question.

Mr. SAULSBURY. Will the Senator from Alabama yield to me for a moment?

Mr. MORGAN. Yes, sir.

Mr. SAULSBURY. It occurs to me that this entire debate is out of order, and that the objection made to the designation by the President pro tempore was itself out of order. The rule is clear and emphatic. Power is conferred by Rule 4 on the President of the Senate to designate to the office, and when objection is made to that designation that objection I hold is clearly out of order, and it ought not to have been entertained. The designation by the Vice President or President pro tempore is an act of power which he is invested with by the rule, and when a Senator rises in his place and objects to that designation I hold that it is contrary to the provisions of the rule which confers that power upon the Vice President.

Mr. MORGAN. I did not yield the floor for the purpose of being taken away from it on a question of order. But the honorable Senator from Delaware, if his view of this question be the correct one, places it in the power of the President pro tempore of the Senate to choose a President of the Senate as long as he may see proper to do so by designation. The Constitution, on the other hand, says that the President of the Senate pro tempore, in the absence of the Vice President, shall be chosen by the Senate. Now, if it is out of order to raise a question of his authority to designate a President pro tempore of the Senate in his absence, or a person to preside, then he has the power under the Constitution to make a designation which we can not regulate if we can not even raise the question of consideration.

Mr. LOGAN. Will the Senator allow me a word right there? I think the Senator certainly misunderstands this matter. It is not the designation of a person as Presiding Officer to occupy the chair, but it is the designation of a Senator to perform the duties of the Chair—not the office of the Chair, but merely to perform the duties of the Chair for the day. That is all there is in it, and that is the language of the rule. It does not make him Presiding Officer or President pro tempore.

Mr. MORGAN. I heard the position taken by the honorable Senator from Illinois.

Mr. LOGAN. It is on the same principle precisely that any Senator may be called to the chair, calling him to the chair just to perform the duties of the Chair for the time being, that is all; not calling him to the chair to act as Presiding Officer of the Senate. It is merely to perform the duties for a particular time.

Mr. MORGAN. I noticed, Mr. Secretary, the position taken by the honorable Senator from Illinois, and I confess its force. I noticed it before the Senator rose to make an additional suggestion to myself.

Mr. HALE. Will the Senator allow me right in that connection to make a suggestion? If the designation by the President pro tempore is simply nothing but the naming of a Senator to perform the duties of the Chair, does it not become a much graver thing when the Senate intervenes and elects a Presiding Officer? That is something more than the designation of a Senator to perform the duties; but there you have got a new Presiding Officer, raising all the grave questions the Senator has alluded to.

Mr. MORGAN. Mr. Secretary, I was addressing myself at the time the Senator from Illinois asked my consent to be heard to the proposition which was made by the Senator from Delaware, that it was out of order to make any objection or raise any question as to the power of the President pro tempore of the Senate to designate his successor in this office, or the person who should fill it in his absence. I say that it is within the power of the Senate of the United States by the Constitution to choose its Presiding Officer in the absence of the Vice President. That is a power that we can not waive and that we can not abandon. We must exercise it, and exercise it according to the Constitution. Now, we have a rule which prescribes the manner of exercising this constitutional duty; that is, a rule for electing our President pro tempore in the absence of the Vice President by ballot. But we must "choose" him. Whoever fills by legal authority the office of President of the Senate, if he does it for one hour, must do it under the constitutional power of this body exercised in conformity with the rules. I do not care how long or how short a time he may exercise it, it must be done in that way; and if not, he is not the President of the Senate within the meaning of the Constitution.

A committee of the Senate, of which Mr. Morton was chairman, made the report which I hold in my hand. I will read the close of it merely:

"1. The tenure of a President pro tempore does not expire at the meeting of Congress after the first recess, the Vice President not having appeared to take the chair.

"2. That the death of the Vice President does not have the effect to vacate the office of President pro tempore.

"3. That the office of President pro tempore is held at the pleasure of the Senate."

Mr. GARLAND. That was adopted.

Mr. MORGAN. That was adopted by the Senate and was understood to be the law of the Senate and has been acted on from that time until the present without any departure unless it may have been in the case of Mr. Eaton, where the point was not raised and the subject was treated as one which had been agreed to by unanimous consent. Here an objection is raised, and the question is presented, and we must dispose of it in some way.

Now, Mr. Secretary, I wish merely to say one more thing about this matter. If we undertake to-day to designate a tenure of office for the honorable Senator from Kansas when he shall take that chair, we shall involve the country in a danger which we ought to avoid, and which we can easily avoid by either through unanimous consent adopting him or electing him, if you please, as President of the Senate without any limitation of his tenure, or by a resolution of that kind which may be adopted in the absence of a ballot taken for his election.

But we ought not by our own act here to put it out of our power to do that which the Senate resolved it had always the right to do by its will and pleasure, to remove any man from that office and put in any person as a substitute. That is a power I do not wish to give up. If the President of the United States, as I remarked before, should die this day and after the honorable Senator is placed in the chair before the Senate had given an official recognition of the fact that the office of President of the United States was vacant, they could elect a man here who would take the office and discharge its duties.

Mr. LOGAN. Now, if the Senator will allow me, I desire to put my proposition in this light: If the President of the United States should die to-day the fact that we recognize the designation made by the President pro tempore of the Senate in my judgment lets us out of the difficulty that the Senator speaks of, for in recognizing that we recognize the President pro tempore as the Acting Vice President. So it exactly lets us out of the difficulty that he speaks of and merely recognizes the person designated as a person performing the duties of the Chair and not holding the office of Presiding Officer of the Senate.

Mr. MORGAN. Does the Senator suppose that in the event that Mr. Arthur should die to-day, Mr. Davis being absent and Mr. Ingalls in the chair, the place of President of the United States would devolve upon Mr. Davis?

Mr. LOGAN. I have no doubt about it at all, if we do not elect another Presiding Officer. If we elect one, then the difficulty arises that the Senator speaks of. If we elect one, in my judgment, that election ousts the present President pro tempore. If we do not elect one, it leaves him holding the office, and the duty of the Chair is merely performed by another party in the absence of the Senator who is Presiding Officer and nothing else for the day. That is the way, in my judgment, out of this difficulty if there is any doubt about it. I can not see any difficulty about it myself. Follow the rule that has been prescribed for the Senate, and then there is no trouble whatever.

Mr. MORGAN. Mr. Secretary, I wish to say that the Senator from Illinois has a fair view of this question, I confess, but not an indisputable one by any means.

Mr. LOGAN. Of course, I do not claim that.

Mr. MORGAN. We are opening a door to disputation by our course of conduct which we should not leave open. We do not know why Senator Davis is not here; we do not know officially that he ever expects to return. Nothing has been placed upon the record, or, I suppose, will be, upon that subject. He may have gone off with the view of abandoning the office entirely. We know nothing about that.

Mr. BROWN. Will the Senator from Alabama allow me to interrupt him a moment?

Mr. MORGAN. Yes, sir.

Mr. BROWN. I chanced on yesterday afternoon to have a conversation with the President pro tempore in which he happened to state to me the reason of his absence to-day. He is absent on a mission of mercy that is highly commendable. He stated that there was an old colored man who had long been a servant connected, I think, either with himself or his family, and who had been very faithful; that that old man had been afflicted for a considerable length of time, and the Judge was supporting him. He understood that that man was now in a very low condition, and the Judge desired to go to him to see whether anything more could be done in ministering to his comfort, and said that he would return as soon as he had had an opportunity to visit him.

Mr. LOGAN. He has merely gone to Wilmington, Del.

Mr. BROWN. So I understood. He has simply gone on that trip with no idea of neglecting duty, but on a mission that I think is highly commendable, and every Senator must agree that he did right in going.

Mr. HALE. No doubt he will be here in the morning.

Mr. BROWN. He will be here on Monday, the Senator from Iowa says.

Mr. MORGAN. No Senator here, I suppose, will understand that I make any intimation that the Senator from Illinois [Mr. Davis] is out of his place improperly. On the contrary, I have no doubt and have had no doubt that he had the best of reasons for being absent, and none better could be stated than those that the Senator from Georgia has just stated. But how do we know he is ever to come back? The remark I made was that the Senate had no official notice whatever of the purpose of his leaving, and the record will show nothing upon that subject. We deal with records and not with imagination or supposition. So we have got a record here which shows the absence of the President pro tempore of the Senate without anything to show why he is absent, or when he is expected to return. Now, he may remain away as long as he chooses; no one has the right to control him in that matter; and from day to day, out of this District, in some State, he can designate an officer to preside if he can designate one to-day. He can thus keep the Senate presided over by his sole will without consulting its judgment in the slightest particular from day to day as long as he pleases if he can do it to-day. That is the whole amount of it.

Mr. MCMILLAN. The Senate can interfere by election at any time.

Mr. MORGAN. The Senate can interfere by an election at any time, and the Senate ought to interfere by an election in every case at the time, so as to have a man here who is stamped with the imprimatur of its approval for President of the United States in the event that that office also should become vacant by the absence of the President.

Mr. MCMILLAN. The Senate has already expressed itself in Rule 4.

Mr. MORGAN. Rule 4. There you see we differ again. There is room for construction there. That shows a state of doubt existing on all hands; but there could be no doubt if we had a President of the Senate sitting in the chair now who was chosen by this body.

Now, Mr. Secretary, I yield to the honorable Senator from Arkansas [Mr. Garland], but I wish to say that at some time during this debate I will submit the proposition to the Senate that we adjourn until Monday in order that this question may be avoided if we can not now settle it.

Several SENATORS. Do it now.

Mr. MORGAN. The Senator from Arkansas desires to be heard; otherwise I would.

Mr. GARLAND. Mr. Secretary, the question presented here is not free from doubt by any means, and it is very important. The precedents that have been established heretofore were established without any objection; no point was made. It seems that there are two precedents, one by Vice President Wheeler and the other by President pro tempore Thurman, but there is no doubt in my mind that these are designations that can not be made in the absence of the Presiding Officer. I think the parliamentary law is very clear upon that subject, and I will detain the Senate a moment or two to read it. In Cushing's Law and Practice of Legislative Assemblies, section 313, speaking of just such emergencies as this, he says:

"But such substitution ought to be made as an official act, and when the presiding officer is himself in the chair of the assembly, or present in it, and can not be made in his absence by letter or otherwise; if the presiding officer is unable to attend in person at the commencement of the daily sitting of the assembly his power of substitution no longer exists, and there is then occasion for the election of a temporary presiding officer."

And that statement, as clear as it is, refers to precedents, some ten or dozen, in a note.

Mr. SHERMAN. I would like to have the Senator read that again. I could hardly hear a word.

The ACTING SECRETARY. Will the Senate please preserve order.

Mr. GARLAND. On the first point made, the case is perfectly clear according to this authority.

Mr. SHERMAN. I would like to have the authority read again.

Mr. HOAR. Will the Senator read Cushing's statement again?

Mr. GARLAND. I will with a great deal of pleasure if I can get attention, but I do not want to read against the wind. In section 313 Cushing says:

"In most of the legislative assemblies of this country, it is also provided by a rule that the presiding officer, if a member, may substitute some other member to perform the duties of the chair in his place if he have occasion to be absent for a part or the whole of the then present sitting. * * *"

As in our Rule 4.

"But such substitution ought to be made as an official act, and when the presiding officer is himself in the chair of the assembly, or present in it, and can not be made in his absence by letter or otherwise; if the presiding officer is unable to attend in person at the commencement of the daily sitting of the assembly his power of substitution no longer exists, and there is then occasion for the election of a temporary presiding officer."

That is perfectly clear, and it does not need any debate on that, and then he refers to ten or a dozen precedents in a note. The President pro tempore of the Senate being absent, we do not know whether from sickness or what cause, can not designate a Member by letter to take his place, and Cushing winds up with the statement that an occasion is then presented for the election of a temporary presiding officer. Now, if "election" is there used in the technical sense of the word, of course we must go into an election; but I apprehend that, construing by analogy, "election" as used there simply means the choice of a temporary presiding officer by some means or other; and as a means of solving this difficulty I offer this resolution as a substitute for that of the Senator from Massachusetts:

"That the designation of Hon. J. J. Ingalls by the President pro tempore of the Senate to preside over the Senate for this day be affirmed and approved by the Senate."

Mr. FERRY. I hope, Mr. Secretary, that will be agreed to.

Mr. GARLAND. I think, Mr. Secretary, that that will better solve this difficulty, which presents, according to the Senator from Alabama, a very serious question.

Mr. HALE. Why should not the Senator from Arkansas use the language exactly of the rule, not say selected or designated to preside over the Senate, but named "to perform the duties of the Chair until an adjournment." Is it not safer?

Mr. GARLAND. The language of the resolution is that Hon. J. J. Ingalls, designated by the President pro tempore, be declared——

Mr. HALE. Following that, why not use the language of the rule, "to perform the duties of the Chair until an adjournment"?

Mr. GARLAND. I am perfectly satisfied with that.

Mr. HALE. That seems to me to be safer than it is to term him Presiding Officer.

Mr. HOAR. Mr. Secretary, I desire to ask the Senator from Arkansas, with his leave, if his proposition does not directly contradict his statement of his own opinion and the authority of Cushing?

Mr. GARLAND. I think not.

Mr. HOAR. Because it affirms and approves, which seems to imply and affirm, that the original designation was right.

Mr. GARLAND. We affirm and approve it to the extent of selecting the Senator named by him; that is all.

Mr. HOAR. But the word "approved" is used.

Mr. GARLAND. The Senate has perfect control of this matter.

Mr. HOAR. The word "approved" goes further than that, in my judgment.

Mr. GARLAND. I am willing to accept any language that carries out the idea. The point I am after is this: I do not care to go into an election, technically speaking, because we shall be confronted to-morrow with the question, Who shall take the place of President pro tempore of the Senate when Judge Davis returns? I want to obviate that difficulty.

Mr. HOAR. I think I shall feel compelled, if the Senator leaves his resolution in that language, to insist that it lie over one day under the rule.

Mr. SHERMAN. Mr. Secretary, it does seem to me that the best way is to adopt the suggestion that has been made on both sides of the House to adjourn until Monday. The adoption of the resolution of the Senator from Arkansas is a choice by the Senate of a Presiding Officer for a time. If so, it deposes the present Presiding Officer, the gentleman we have regarded as our Presiding Officer, and compels the Senate to again act upon the question of his reelection. That would involve us in delay and doubt and dispute, perhaps. At any rate a great deal of time would be occupied. We shall only lose two or three hours by now taking the ordinary adjournment until Monday. I have no doubt that then the Presiding Officer will be here.

Several SENATORS. Make the motion.

Mr. SHERMAN. Mr. Secretary, I submit the motion that the Senate do now adjourn until Monday.

Mr. BUTLER. That was the motion I intended to make. I have no objection to the Senator from Ohio submitting it.

The ACTING SECRETARY. It is moved by the Senator from Ohio that the Senate do now adjourn until Monday next at 12 o'clock.

The motion was agreed to; and (at 1 o'clock and 12 minutes p. m.) the Senate adjourned till Monday next.

Monday, June 5, 1882 (Journal, p. 779).

The President pro tempore resumed the chair and addressed the Senate as follows:

SENATORS: On Friday last, being suddenly called away from the city, I named Hon. J. J. Ingalls to perform the duties of the Chair until the adjournment that day, under the provisions of Rule IV of the Senate. Before taking that step the recent precedents were consulted, and the exact form of a letter addressed by Hon. A. G. Thurman when President pro tempore of the Senate to Hon. W. W. Eaton, asking him to preside for the day, on several occasions, was adopted because no dissent had been expressed in the Senate.

Since this precedent is regarded as of doubtful authority, and the Chair desires to guide his action by the judgment of the Senate, he would feel obliged by a decision that would relieve this important question of its obvious embarrassments.

Whereupon, Mr. Anthony submitted the following resolution; which was considered, by unanimous consent, and agreed to:

Resolved, That the Committee on Rules be instructed to inquire into the authority of the Presiding Officer, being absent from the Senate, to designate a

Senator to take the chair; and if, in its opinion, he has not such authority, then to further inquire into the expediency of conferring it upon him.

(Congressional Record, p. 4506.)

POWERS OF PRESIDING OFFICER.

The PRESIDENT pro tempore. Senators, on Friday last, being suddenly called away from the city, I named Hon. J. J. Ingalls to perform the duties of the Chair until the adjournment that day under the provisions of Rule 4 of the Senate.

Before taking that step the recent precedents were consulted and the exact form of a letter addressed by Hon. A. G. Thurman when President pro tempore of the Senate to Hon. W. W. Eaton, asking him to preside for the day on several occasions, was adopted because no dissent had been expressed in the Senate.

Since this precedent is regarded as of doubtful authority, and the Chair desires to guide his action by the judgment of the Senate, he would feel obliged by a decision that would relieve this important question of its obvious embarrassments.

Mr. LOGAN. I move the reference of the question to the Judiciary Committee, that they may consider it and report to the Senate.

Mr. SHERMAN. It seems to me that as to the matter of reference the question ought to be referred to the Committee on Rules.

Mr. DAVIS of West Virginia. That was the suggestion I was about making.

Mr. LOGAN. I have no objection to that reference. I am willing to accept the suggestion.

The PRESIDENT pro tempore. The motion is amended so as to refer the question to the Committee on Rules.

Mr. GARLAND. The question, I presume, which the Chair wishes to have referred to the Committee on Rules is whether the action of the President pro tempore was proper under the rules. I should like for the inquiry to be broadened a little so that the committee may be also instructed to inquire whether the rules of the Senate need amending in that particular. I think that is a legitimate and proper inquiry if the question is going to any committee at all.

The PRESIDENT pro tempore. Does the Senator make that motion?

Mr. GARLAND. I make that motion.

Mr. LOGAN. I suppose the mere reference of the matter to the Committee on Rules will bring the whole question to the attention of the committee.

Mr. GARLAND. Not necessarily, in the way it is put by the President pro tempore.

Mr. LOGAN. If the Senator will make that motion I will accept it.

Mr. GARLAND. I make the motion that the inquiry be enlarged so as to have the committee inquire whether the rules of the Senate should be amended.

Mr. ANTHONY. I had prepared a resolution which I think covers the whole ground. It seems of little importance how this question may be decided so far as it is concerned, but it is of great importance as affecting the organization of the Senate and the possible succession to the Presidency that it should be decided one way or the other. If the imbroglio should lead the Senate to attend to the words of wisdom that fell from the Senator from Alabama [Mr. Morgan] to the effect that it is the duty of Congress at this session to provide a better mode of Presidential succession, I think it would prove to have been a very fortunate circumstance. I send the resolution which I prepared to the chair, though I have no particular preference as to which suggestion is adopted.

The PRESIDENT pro tempore. The resolution will be read.

The Acting Secretary read as follows:

"*Resolved*, That the Committee on Privileges and Elections be instructed to inquire into the authority of the Presiding Officer, being absent from the Senate, to designate a Senator to take the chair, and if in its opinion he has not such authority, then to further inquire into the expediency of conferring it upon him."

Mr. GARLAND. That would cover the question.

Mr. SHERMAN. I see no objection at all to referring the question to the Committee on Privileges and Elections, but the question of the amendment of the rules ought to be referred to the Committee on Rules. It would be very proper to have both committees look into it.

The PRESIDENT pro tempore. Do the Senators from Illinois and Ohio withdraw their motions, so that the Senator from Rhode Island may have his resolution acted upon?

Mr. ANTHONY. I have no feeling about it. If the Senators prefer to withdraw their motions, then I think that the resolution as I have offered it is broader than the original proposition.

Mr. LOGAN. Let all the propositions go to the same committee—to the Committee on Rules.

Mr. ANTHONY. Very well. I am indifferent as to the committee.

The PRESIDENT pro tempore. Is it the pleasure of the Senate that the resolution offered by the Senator from Rhode Island be also referred to the Committee on Rules?

Mr. ANTHONY. Let the resolution be altered so as to designate the Committee on Rules instead of the Committee on Privileges and Elections.

The PRESIDENT pro tempore. The resolution will be so modified. The Chair would state to the Senator from Rhode Island that in the form of his resolution it ought to be agreed to by the Senate. The resolution will be read as modified.

The resolution was read, as follows:

"*Resolved*, That the Committee on Rules be instructed to inquire into the authority of the Presiding Officer, being absent from the Senate, to designate a Senator to take the chair, and if in its opinion he has not such authority, then to further inquire into the expediency of conferring it upon him."

The PRESIDENT pro tempore. The Chair suggests that the motion of the Senator from Ohio, as accepted by the Senator from Illinois, should be withdrawn, as the resolution of the Senator from Rhode Island covers the whole subject.

Mr. SHERMAN. I think the Senate had better adopt the resolution of the Senator from Rhode Island.

The PRESIDENT pro tempore. The former motion is withdrawn, and the question is on agreeing to the resolution of the Senator from Rhode Island as modified.

The resolution as modified was agreed to.

Monday, June 19, 1882 (Journal, p. 842).

Mr. Frye, from the Committee on Rules, who were instructed by a resolution of the Senate of the 5th instant to inquire into the authority of the Presiding Officer, being absent from the Senate, to designate a Senator to take the chair, reported the following resolution for consideration:

Resolved, That Rule IV be amended so as to read as follows:

"In the absence of the Vice President the Senate shall choose a President pro tempore, who, when temporarily absent, may designate, in writing, a Senator to perform the duties of the Chair for the day, and, during such temporary absence, until the Senate shall otherwise order."

Friday, June 23, 1882 (Journal, p. 869).

On motion by Mr. Frye,

The Senate proceeded to consider the resolution reported by him from the Committee on Rules on the 19th instant to amend Rule IV of the Senate; and having been amended on the motion of Mr. Ferry,

After debate,

On motion by Mr. Ferry,

Ordered, That the said resolution be recommitted to the Committee on Rules.

(See Congressional Record, pp. 5259–5265.)

POWERS OF PRESIDING OFFICER.

Mr. FRYE. I call up the resolution reported by me some days since from the Committee on Rules.

The PRESIDENT pro tempore. The resolution will be laid before the Senate.

The Acting Secretary read the following resolution, reported by Mr. Frye from the Committee on Rules on the 19th instant:

"*Resolved*, That Rule 4 be amended so as to read as follows:

"'In the absence of the Vice President the Senate shall choose a President pro tempore, who, when temporarily absent, may designate in writing a Senator to perform the duties of the Chair for the day, and during such temporary absence, until the Senate shall otherwise order.'"

The PRESIDENT pro tempore. The amendments proposed by the Senator from Michigan [Mr. Ferry] and the Senator from Arkansas [Mr. Garland] will be read.

The ACTING SECRETARY. Mr. Ferry proposes to amend the resolution so as to make Rule 4 read:

"In the absence of the Vice President the Senate shall choose a President pro tempore, and the Presiding Officer, when to be temporarily absent, may, whether present or absent, designate in writing a Senator to perform the duties of the Chair for the day."

Mr. Garland proposes the following substitute for the proposed rule:

"The Vice President or the President of the Senate pro tempore shall have the right to name in open Senate or by writing a Senator to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment."

Mr. FRYE. I call the attention of the Senator from Arkansas to the necessity of a change in his amendment. After the words "pro tempore," in the second line of Rule 4, as proposed by the committee, his amendment should come in, as the first line and a half of the proposed rule provide for the election of a President pro tempore when the Vice President is absent. The amendment, if adopted, would have to be changed in that respect.

Mr. GARLAND. The amendment that I have offered was the rule upon the subject as late as 1856. It was afterwards changed to the phraseology substantially that we have now in Rule 4. The suggestion made by the Senator from Maine, if I understand it, is unnecessary, because the Constitution already provides for the election of a President pro tempore by the Senate in the absence of the Vice President, and the rule as proposed by the committee would simply be to that extent a reenactment of the Constitution, which would be unnecessary.

Mr. FRYE. I did not know but what the Senator had overlooked the first line of the rule reported from the committee.

Mr. GARLAND. No, sir.

Mr. FRYE. Then, of course, I have no suggestion to make touching the Senator's amendment.

Mr. GARLAND. Senators will notice that Rule 23 in the old compilation provides that—

"The Presiding Officer of the Senate shall have the right to name a Senator to perform the duties of the Chair; but such substitution shall not extend beyond an adjournment."

The words "Presiding Officer" include, of course, the President pro tempore. The constitutional provision is omitted in that rule, and very properly, because it was unnecessary to reenact the authority given by the Constitution.

I want to get at precisely what I think the chairman of the Committee on Rules desires, so as to leave it to the President pro tempore or the Presiding Officer, whoever he may be, to give this authority by writing in his absence from the Senate. That is the chief difficulty, as I understand it. I think the old rule does not meet that difficulty when amended by inserting simply after the words "to name a Senator," the words "in open Senate or by writing," providing for either mode. That, I think, covers the whole question and brings the rule back as it was before the revision of 1877.

Mr. FERRY. I call the attention of the Senator from Arkansas to one point which he has not defined. He will remember that the question came up when the President pro tempore designated a Senator to preside in his absence, which was done by letter in the absence of the President pro tempore. In order to cure that difficulty the designation should be as I have suggested by my amendment, in writing, whether the Presiding Officer is present or absent, so that there can be no doubt about the right of the Presiding Officer, whether he may be here or not. It was the implication and design of the present rule that the Presiding Officer should be here in the morning, and being present should designate some Senator to preside during the day. In the case alluded to, the Presiding Officer was necessarily called away and could not be present, so that he designated a Senator in writing. That was excepted to by the Senate, and the

Senate adjourned over until Monday, when the President pro tempore returned. I have in my amendment followed that language of the rule. The present rule of the Senate is that—

"In the absence of the Vice President the Senate shall choose a President pro tempore."

The proposition of the chairman of the Committee on Rules confines the authority to the President pro tempore and does not authorize the Vice President to make a designation. In that respect I think it is defective.

"And the Presiding Officer shall have the right to name a Senator to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment."

The proposition of the Committee on Rules is to allow the President pro tempore to designate a Senator, during his temporary absence, until the Senate directs otherwise, virtually authorizing the President pro tempore to designate a Senator who may preside here day after day, at the pleasure of the Senate, of course, throughout the session. I think that is not the design of the temporary filling of the Chair. It should be to meet an emergency, to wit, the case where the Presiding Officer can not attend either by reason of sickness or other cause of absence; and the rule should of course give him the authority to designate in writing, not compelling him to be present, because that might be an impossibility. He should have the authority to designate in writing, whether absent or present, some Senator to preside during the day, and if he is to be absent longer than a day, then he should designate some other or the same Senator for the second or succeeding day, determining the time when the temporary presiding officer shall preside over the body; else it gives the power to the Presiding Officer to designate some Senator to preside during the session unless the Senate should take it upon itself to "otherwise order."

The amendment proposed by the Senator from Arkansas is to make Rule 4 read:

"The Vice President, or the President of the Senate pro tempore, shall have the right to name, in open Senate or by writing—"

It does not state whether that writing shall be in open Senate or without the Senate—

"a Senator to perform the duties of the Chair; but such substitution shall not extend beyond an adjournment."

I propose to make Rule 4 read:

"In the absence of the Vice President—"

I have followed the language of the present rule—

"the Senate shall choose a President pro tempore; and the Presiding Officer—"

I so far use the words of the present rule—

"when to be temporarily absent—"

Not when he is temporarily absent, but "when to be." It is not expected that the Presiding Officer can be here and absent also. This is to make the rule explicit to meet the emergency that arose the other day, to which I have alluded. My amendment provides that when the Presiding Officer has to be temporarily absent he—

"may, whether present or absent, designate in writing a Senator to perform the duties of the Chair for the day."

My judgment is, having been a member of the Committee on Rules, and I defer largely to the present chairman of the committee, who has been in the House and is familiar with the rules of that body, that it is the safest proposition to confine the designation to the daily sessions of the Senate. If it is to be remanded to the Senate, the Senate might as well control the matter from day to day. We have chosen a President pro tempore, and for his convenience, whether present or absent, he should be allowed to designate a Senator to preside during the day alone. That is the safest way, else if the proposition made by the Committee on Rules is adopted it puts the power in the hands of the Presiding Officer to designate a Senator to displace himself, for he can not return here and seek to regain his seat without the permission of the Senate, for the rule reported from the committee reads:

"Until the Senate shall otherwise order."

Mr. LAPHAM. Allow me to suggest to the Senator from Michigan that his amendment would require the Presiding Officer, every time he calls a Senator to the chair for five minutes, to designate him in writing.

Mr. FERRY. No; that is done during the day and is for the day.

Mr. LAPHAM. This is the only rule under which that is done.

Mr. FERRY. But the practice is for the Chair to call any Senator of the body to it during the day, and under this written designation he would call any Senator to the chair for the day.

Mr. LAPHAM. Under the rule as proposed, the Presiding Officer, every time he calls a Senator to take his place for five minutes, would have to do it in writing.

Mr. FERRY. Not at all. That would come under the general rule of allowing any Presiding Officer to call a Senator to the chair temporarily for 5 minutes or 10 minutes.

Mr. LAPHAM. Is there any rule to that effect?

Mr. FERRY. That is the practice.

Mr. LAPHAM. There is no other rule than this one, and if you make the provision proposed in this rule the Presiding Officer would have to make every designation in writing.

Mr. FERRY. At the suggestion of the Senator from New York, in order to guard against the possibility of confining the rule to writing, so that the Presiding Officer may have the right during the day to designate a Senator to occupy the chair, and not be compelled to do it in writing, I move, after the word "writing," in the third line of my proposed substitute, to insert the words "or otherwise;" so as to read:

"In the absence of the Vice President, the Senate shall choose a President pro tempore; and the Presiding Officer, when to be temporarily absent, may, whether present or absent, designate, in writing or otherwise, a Senator to perform the duties of the Chair for the day."

Mr. FRYE. Mr. President, I do not think the Committee on Rules have the slightest pride of opinion about this matter. We did not in committee discuss the question of its necessity. My own opinion is very clear that no amendment is necessary; that the President of the Senate pro tempore in appointing a Senator to preside in his absence the other day did not exceed the spirit of the rule and did no more than he had a right to do; but the discussion in the Senate over it disclosed a serious doubt, and that doubt the committee were entirely willing to relieve the rule from and to make it certain.

The only question that came up for discussion was as to the length of time the Presiding Officer of the Senate might appoint some one to preside in his place. The majority of the committee were of the opinion that it ought to be longer than one day. Several Senators spoke to me in relation to it, observing that in their opinion it ought to be longer than one day.

The criticism of the Senator from Michigan, I think, is not applicable to the rule as reported by the committee, that is, to that latter portion of it where the words "until the Senate shall determine otherwise" occur. If the Senator will notice, he will see that the words "until the Senate shall otherwise order" qualify only the words "and during such temporary absence." The President of the Senate is to be absent for a week or he is sick for a few days. The sickness extends. He appoints in writing as presiding officer of this body a Senator to preside in his place during his absence until the Senate shall otherwise order, not during a whole session, not during 20, 30, 40, or 50 days, not so as to exclude himself from taking the chair on his return, but, unless the Senate shall otherwise order, during that absence. It limits and qualifies only the words "during such temporary absence." If he is absent longer than he expects to be, and the Senate desires to choose a presiding officer in his place, the Senate can do it. As the phrase qualifies only those words, it is not open to the criticism of the Senator from Michigan in that regard.

The other criticism made on the rule as reported is that it does not authorize the Vice President to name anyone to preside in his place. In my opinion there is no necessity for authorizing the Vice President to name a Senator to preside in his absence. The rule itself provides that if the Vice President is absent the Senate shall chose a President pro tempore in his place. I suppose if a Vice President were occupying the chair, or if a President pro tempore were occupying the chair, and was going to be absent 10 or 15 minutes or 20 minutes, it is inherent to the right of the Presiding Officer for that time to name a Senator to occupy the chair without any rule at all. I do not suppose any question in any body on earth was ever raised about the right, inherent to the office itself, if the President of the Senate wanted to be absent for 10 or 15 minutes, or something of that kind, to name a Senator and put him in the chair to occupy it temporarily.

The rule was intended to cover a case where the Presiding Officer was not to be here or was to be absent a whole day. The majority of the committee, I say, thought it a great deal better that the power should extend for more

than one day, that it should extend over two or three or four days, if the Presiding Officer should be absent so long a time.

The Speaker of the House has the power to appoint, in case he is sick, for 10 days. To be sure that is done with the approval of the House, but the appointment of a presiding officer in the absence of the President of the Senate is with the approval of the Senate, in fact, because the Senate has a right at any moment to proceed to the election of a President pro tempore.

Mr. MAXEY. I wish to call the attention of the Senator from Maine to one point, if he will permit me. I do not see, myself, and I should like to have it explained how, under the Constitution, the position of the Senator can be correct. The Constitution provides that—

"The Senate shall choose their other officers and also a President pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States."

The language is "in the absence of the Vice President." If the Senator's position is correct, that he may designate a presiding officer for 1 day or 10 days, is it not practically saying that the Vice President may select a Presiding Officer for the entire term and thus deprive the Senate of the constitutional power to elect a President pro tempore in the absence of the Vice President?

Mr. FRYE. But the rule reported from the committee does not authorize the Vice President to designate a Senator to fill the place. If the Senator will look at the rule reported from the committee, he will see that it gives no authority to the Vice President to appoint.

Mr. MAXEY. As I understood the Senator, if the Vice President were absent for a day or 10 days he might by writing or othewise appoint a President pro tempore during his absence.

Mr. FRYE. No; I was speaking of the President pro tempore entirely.

Mr. FERRY. Let me remind the Senator that the proposed rule says the Presiding Officer shall himself fill the position as President pro tempore.

Mr. FRYE. The rule we have reported uses no such language.

Mr. FERRY. There is where I think the Senator deprives the Vice President of the power which he proposes to give to the President pro tempore. The language should be "the Presiding Officer," so that it will cover either contingency.

Mr. FRYE. I do not think it should be the Vice President, because the same rule provides that in the absence of the Vice President the Senate shall elect a President pro tempore in his place. I do not believe the Vice President ought to have the authority in an absence of one day, two days, or more.

Mr. FERRY. Then, I ask the Senator where is the authority for the Vice President to call any Senator temporarily to the Chair during the day, unless you provide for it by the rule?

Mr. FRYE. I have no doubt it is an inherent right to any presiding officer in any body or corporation in the world, if he wants to step out for 10 minutes, to name some one to take his place.

Mr. HOAR. Suppose that to be true, will the Senator say it was true when a written rule regulating the whole matter was in force and which gave him the right to name in his absence?

Mr. FERRY. I will add to what the Senator from Massachusetts has said that in the absence of a rule that would be inherent in any body, because the body has the power to preserve its own life and advance its own interest and well-being; but, as the Senator from Massachusetts has aptly said, where a rule is prescribed you are confined to that rule when it treats of a particular proceeding.

Mr. FRYE. But I believe that the rule was originally made and intended to apply only to those cases where the Presiding Officer was not present, was absent himself, did not come to the Senate. I do not believe the rule was ever intended to apply to the case of a Presiding Officer who was present and wanted to go out for five minutes.

Mr. FERRY. But, if the Senator will allow me, I had the honor of being the chairman of the Committee on Rules when the present rules were framed, and this matter was discussed in committee. The phraseology here authorizes the Presiding Officer, whoever he may be, to call any Senator temporarily to the chair for his convenience. Then it was found that it was sometimes necessary for the Presiding Officer to be absent; and inasmuch as he as the President pro tempore had been designated by the body as such and it might be convenient or necessary for him to be absent, his right to designate a substitute should be confined to a single day; else it was putting it in the power of one man desig-

nated by the body to control the presidency of the body; and it was on that account it was confined to the adjournment.

I can see the point that the Senator from Maine has made and the criticism which he has made on my comment. If the Senator's language had been like this, then there would not be the exception which I make to the proposition of the committee. The proposition reads thus:

"In the absence of the Vice President, the Senate shall choose a President pro tempore, who, when temporarily absent, may designate in writing a Senator to perform the duties of the Chair for the day—"

And mind you—

"and during such temporary absence—"

A day or a second day would be "during such temporary absence;" but if the Senator put the words "and only" before "during such temporary absence," and the word "or" before "until," so as to read "or until the Senate shall otherwise order," then he would put it out of the power of the body to displace the Presiding Officer unless the body saw fit to do so. The word "during" might mean during the whole time, or it might be only a portion of that time.

If the Senator will put in the word "only," then it would be confined to that and would not be inconsistent with the latter part, which says "until the Senate shall otherwise order."

Mr. HOAR. Will my friend from Maine allow me to make a suggestion?

Mr. FRYE. Certainly.

Mr. HOAR. Will he be good enough to take his copy of Rule 4, which he has in his hand, and say whether this meets his view and that of the committee? Let the rule stand as now.

"In the absence of the Vice President, the Senate shall choose a President pro tempore, and the Presiding Officer—"

Of course including both—

"shall have the right to name a Senator to perform the duties of the Chair, but such substitution—"

Now, I depart from the present rule and add this language:

"when made in the absence of the Presiding Officer from the Senate shall be in writing, and in all cases shall be in force only until the return of the Presiding Officer, and until the Senate shall otherwise order."

Would not that meet every criticism?

Mr. FERRY. Say "or until."

Mr. FRYE. If the Senator will allow me, about that, is it better to use the words "and the Presiding Officer" so as to include the Vice President, when your rule provides that if the Vice President is absent the Senate shall elect a President pro tempore? The committee confined it to the President pro tempore.

Mr. HOAR. I see the Senator is right. The Vice President's authority to preside over the Senate is not conferred by the Senate but by the people in the Constitution, and I can see a very grave reason in aid of the suggestion of my friend from Maine that the Vice President should not be clothed with the permanent power of creating a presiding officer of the Senate who is to succeed to the Presidency.

Mr. FRYE. Now, the Senator from Massachusetts offers a rule which is just what the committee is desiring to attain other than that one proposition as to "the Presiding Officer."

Now, Mr. President, I desire to say just one word more. It seems to me that really the only question before the Senate is, and the only question before the committee was, whether the President pro tempore should have authority to provide for an absence of more than one day. If a majority of the Senate prefer that it should be for but one day, then the amendment offered by the Senator from Michigan or the amendment offered by the Senator from Arkansas answers every purpose. If, on the contrary, a majority of the Senate prefer that he should have the right to name some one to preside in his absence unless the Senate shall otherwise order, then the rule reported by the committee, or, what I like better, the amendment suggested by the Senator from Massachusetts, will carry out the will of the majority of the Senate.

Mr. HOAR. I can meet the objection by saying "and such Presiding Officer shall have the right."

Mr. FERRY. Is the Vice President such a Presiding Officer because he is Vice President? Do not the words "Presiding Officer" cover whoever is in the chair?

Mr. FRYE. But the committee did not wish it to cover the Vice President at all.

Mr. GARLAND. I think the Senator from Maine is somewhat mistaken in saying that the difficulty here to be remedied is in allowing the absent Presiding

Officer to substitute some one in his place for the day or for several days. When you are going to make a statute or rule you must first look at the mischief you are going to attempt to remedy, and see what that is. The mischief that gave rise to discussion when the present Presiding Officer a few weeks since absented himself from the city was this, whether or not the Presiding Officer could by writing designate a Senator to preside in his place? That was the question that was raised when the letter of the Presiding Officer was read to the Senate. I was very clearly of the opinion, from the authority I read at that time in Cushing, that the Presiding Officer could not do that thing. My understanding was and is that it was to remedy that defect in Rule 4 that the matter was referred to the Committee on Rules.

Let me state the question again: Shall we allow the Presiding Officer, when he is compelled to absent himself from the Senate, to name some one to preside in his absence, without the necessity of coming to the Senate to do that, as was done heretofore in several instances, but the question was never raised on the propriety of it. So the only question is, How are we to give this authority to the Presiding Officer to designate some one to act in his stead and make it effectual under the rule?

No one disputes the fact that the Presiding Officer may in open Senate absent himself and call some one to preside during that absence. The question was. Could he do that by writing? And it is to remove that defect in Rule 4 that this proceeding is now had here, as I understand.

Mr. FERRY. But the point, if the Senator will allow me, was whether he could do that in writing, whether present or absent.

Mr. GARLAND. Whether present or absent; perhaps that is a better qualification of it. While the matter does not appear to be one of very great importance, it is in itself when it is looked at; and there are some curious questions arising on this whole proceeding which we might just as well dispose of now as at any other time, since we have the matter in hand.

We read in the Constitution under article 1, section 3, clause 5, that "The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President." It becomes a serious question and one that is contended for by a good many, that just as soon as the Vice President absents himself from here there must be a choosing of a President pro tempore. I wish the Senate to pay attention to this proposition. I state it again. Under clause 5, section 3, article 1 of the Constitution which uses imperative language that the Senate "shall" choose a President pro tempore in the absence of the Vice President, can the Vice President designate at all anybody to take his place? Must not the Senate proceed absolutely to an election? The strict, unqualified language of the Constitution leaves but one conclusion, and that is that the Senate must elect. To interpret it differently we must put in words or must incorporate words in the Constitution that do not exist there.

There is an absence of the Vice President whether he goes to Baltimore, whether he goes to New York, or whether he absents himself from the Chamber and simply goes to Willard's Hotel, and the force of the language is that whenever he does that at all, the Senate must then choose its President pro tempore in the absence of the Vice President which has occurred. If it be permissible for the Senate to do that, it occurred to me that some power should be given to the Vice President to make a substitution. I am not sure that it can be given at all by rule. I am not sure, upon examination of the question, whether or not the Senate is limited in its power of giving this right of substitution to the President pro tempore, properly speaking. But I have framed the amendment that the Vice President——

Mr. FERRY. May I suggest to the Senator from Arkansas that the fact of confining the substitution to one day is constructively in the view that the Vice President is present, he is near; and, therefore, that is not in conflict with the Constitution, which provides that in the absence of the Vice President a President pro tempore shall be chosen. There is the force of covering both officers in delegating the power to substitute.

Mr. GARLAND. That certainly is perceptible if they both really exist under the Constitution. There is the difficulty in the way. I do not care what language you adopt, what phraseology you please, it will not remove this difficulty if it be a difficulty. But the amendment that I propose is that the Vice President or the President of the Senate pro tempore shall have the right to name in open Senate or by writing a Senator to perform the duties of the Chair.

Mr. FRYE. Let me ask the Senator right there if "by writing" means that the writing must be given in open Senate? Should there not be a word put in there to show that he may without being present give that writing?

Mr. GARLAND. I am coming to that in a moment. I wanted to get this other idea, if I could, clearly before the Senate, because it is a very troublesome proposition. Is it necessary for Rule 4 or any other rule to reenact any portion of the Constitution? Our rules are liable to that objection in several respects. Take, for instance, Rule 19; it is nothing but a transcript of that provision of the Constitution allowing the Vice President to vote when there is a tie in the Senate. That rule is unnecessary and is so much surplusage in the body of the rules.

Now, I come to the question propounded by the Senator from Maine just now. The language of my amendment is, "in open session or in writing." The intention is that in open Senate he simply calls a Senator to the chair, and "in writing," standing in contradistinction to that, means that he makes this writing in his absence from the Senate. But if the Senator from Maine prefers the phraseology changed so as to make that free from any question, I have no objection to saying "in open Senate, or, if absent, in writing." I am willing those words shall be incorporated, and then proceed "to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment."

I think it is best to limit it explicitly to a particular day, and that day only, and not leave a doubt arising always as to whether or not the Presiding Officer who has been elected has been deposed from his position by his own act or by the act of the Senate inadvertently, it may be, or accidentally.

The difference between the rule proposed by the Senator from Michigan and that proposed by myself is more verbal than anything else, at last, and the criticism (leaving out the question I have heretofore referred to as arising under the Constitution) is as criticisms generally are at best, verbal.

Mr. FERRY. I suggest to the Senator from Arkansas that where he speaks of designating in writing, he put in the words "whether present or absent," so as to guard against the same contingency we have had before. With that modification I shall be perfectly willing to take his amendment.

Mr. GARLAND. I have signified to the Senator from Maine that I was willing to accept such a proposition.

Mr. FERRY. I think, with the Senator, the difference between his amendment and mine is simply verbal; but as the Senate is trying to make it explicit to cover a case that has come before us to trouble us, let us be explicit.

Mr. GARLAND. That is precisely what I am desirous of doing, and as the Senator from Maine has said, what the Committee on Rules were desirous of doing. I have no pride of opinion about this.

Mr. FERRY. Neither have I.

Mr. GARLAND. I want to clear away the difficulty, because I am satisfied, whatever may have been thought of the proposition that was raised the other day in the absence of the President pro tempore, he could not, under the well-considered and the well-settled parliamentary rules, designate a person by writing; and that is the difficulty in the way that I wish to remove now.

Mr. FRYE. Allow me to ask the Senator a question. His proposition is that the Vice President or the President of the Senate pro tempore may name for, at any rate, one day a Presiding Officer, and may do so in writing. Now, the Constitution says that in the absence of the Vice President the Senate shall elect a President pro tempore. Does the Senator believe that we have the authority to give the Vice President power to appoint in his absence for one day the Presiding Officer of this body?

Mr. GARLAND. Concerning that proposition, the inclination of my mind is that we have not, on the grounds stated.

Mr. FRYE. That is why the Committee on Rules left out the Vice President.

Mr. GARLAND. I understand that, but the question now is presented in all its shapes and phases by these different amendments. It is true by the very inherent power of every organization, from a crossroads convention to the Senate of the United States, there is power to perpetuate its existence. It has the inherent power, as it is termed, to do it, and if we find the Chair vacant from any cause, we can put some one in it unquestionably; but under the language of the Constitution it is extremely doubtful whether, when the Vice President is out of that chair for any cause and for any purpose or for any time, we are not by the force of the Constitution bound to have an election of a President pro tempore.

Mr. SHERMAN. Mr. President, this little problem was a much more difficult one to solve by the committee than they thought it was in the first instance. I have no doubt that the criticisms made have been well taken; but I think

there is still a gap open that ought to be closed, and with the consent of the Senator from Michigan I will move to add to his amendment the words:

"And the President pro tempore may repeat such designation from day to day until the Senate shall otherwise order."

I make the distinction here between the President pro tempore and the Vice President. I think the Vice President ought to have no such power. The Vice President is not elected by the Senate, is not an officer of the Senate except as made so by the Constitution. The rule and the Constitution require an election of a President pro tempore in the absence of the Vice President. I would allow the Vice President to fill the chair for the day; but beyond that I do not think he ought to be allowed to designate an officer to preside over this body.

With this amendment the President pro tempore may not only provide for the day that he is necessarily absent but may provide for the next day, and so on from day to day until his disability is manifest, when the Senate may interpose and check the practice.

Mr. FRYE. Let me call the Senator's attention to the fact that if the rule be amended in the way he proposes, leaving in the words "and the Presiding Officer" may do so and so, that "Presiding Officer" covers the Vice President of the United States.

Mr. SHERMAN. No; I strike that out. I will read it as I have it with my addition.

Mr. FRYE. Please do so.

Mr. SHERMAN. It would read:

"In the absence of the Vice President the Senate shall choose a President pro tempore, and the Presiding Officer when to be temporarily absent may, whether present or absent, designate in writing a Senator to perform the duties of the Chair for the day."

That gives the power to both officers. Then comes—

"And the President pro tempore may repeat such designation from day to day until the Senate shall otherwise order."

Mr. FERRY. That confines it to the President pro tempore.

Mr. FRYE. It seems to me it is a very serious question whether the Senate has authority to authorize the Vice President to name a man for a day to preside in this body.

Mr. SHERMAN. That is in the rule now.

Mr. FRYE. I know it; but under that fourth rule this very discussion has arisen.

Mr. FERRY. That has been the practice, I will state to the Senator from Maine.

Mr. SHERMAN. From the foundation of the Government. The Vice President must be absent at times, for a moment, for five minutes, or for part of a day.

Mr. FRYE. My idea always was that that was inherent to the office itself, if it was only a 5 or 10 minutes' absence.

The PRESIDENT pro tempore. The hour of 1 o'clock has arrived.

Mr. SHERMAN. I think there is no objection to having this matter disposed of.

The PRESIDENT pro tempore. It must be by unanimous consent of the Senate.

Mr. MORGAN. I think the Senate had better go on with this subject until we finish it.

Mr. SHERMAN. I think so, and it can be finished in a few minutes.

The PRESIDENT pro tempore. By unanimous consent the resolution may be proceeded with.

Mr. MORGAN. I desire to state some objections to all the amendments that have been offered here.

Mr. FERRY. I will state to the Senator from Alabama that an emergency may come up at our next session. I presume there will be no further debate on the matter.

Mr. MORGAN. It is a question of too much importance, and there are too many grave consequences hanging on this question to pass it over without debate.

The PRESIDENT pro tempore. If there is to be debate, Senators may object.

Mr. INGALLS. A majority can take it up.

The PRESIDENT pro tempore. A majority can if they choose.

Mr. INGALLS. It ought to be done.

Mr. FERRY. I hope the chairman of the Committee on Rules will ask the Senate to continue the consideration of this matter.

Mr. INGALLS. I trust the chairman of the Committee on Rules will move to continue the consideration of the subject.

Mr. FRYE. I should like to have this rule disposed of, because I have another one to bring up.

The PRESIDENT pro tempore. If there be no objection, the matter will be considered until 2 o'clock, unless the vote should be taken sooner.

Mr. MORGAN. Mr. President, Rule 4, in its substance, has been a long time in force in the Senate. It has been considered very often; occasions have frequently arisen under which it was necessary to give an interpretation to this rule. It seems to me that the language of the rule goes as far as the Senate can possibly go in the execution of its constitutional duty in providing for a Presiding Officer, and that any amendment we may make by addition to it will be a violation of the traditions of the Senate, and I am fearful will be a violation of the Constitution of the country. I think it is very much safer for us to rest on Rule 4 as it is now found in our book than to undertake to provide for some temporary emergency or against some occasional inconvenience by venturing upon ground the solidity of which is extremely doubtful.

According to my reading of the Constitution, I am compelled to deny the power of the Senate to select a Presiding Officer otherwise than in the method prescribed in the Constitution, which is by a choice, which must be by a vote either by ballot or viva voce. If no other consequences hung about this question than the mere matter of providing an officer to preside over the deliberations of this body, it would be a mere bagatelle in comparison with what the question actually involves, for we find that the statutes of the United States hang upon this office of President pro tempore of the Senate all the powers and duties of President of the United States, and at this moment of time the honorable gentleman who presides over our deliberations is the next in succession to the Presidency of this country. When consequences so important as these are made by statute to hang upon the construction which the Senate may place upon its constitutional powers in the selection of a Presiding Officer, it certainly becomes us to be extremely discreet and cautious in our procedure.

The honorable Senator from Arkansas [Mr. Garland], who is acknowledged to be of eminent judicial ability, has expressed very grave doubts about our power to amend this rule so as to include the provisions of either of the amendments that are now tendered by various Senators and by the committee. In matters of this kind when we have serious doubts, we ought always to stop; we ought not to venture upon such ground when Senators are able after due consideration to express a serious doubt as to the constitutionality of the action that the Senate is about to take, for if doubts of this kind obtain in the Senate and events should make it necessary that these doubts should be resolved with reference to the incumbency of the Presidential office of the United States, then, sir, those doubts when they get abroad into the country might at once ripen into strife, strife into commotion, commotion into disaster. So I take it to be the duty of the Senate on this occasion, if they entertain a serious doubt of the propriety or of the constitutional power to adopt any amendment that is proposed here, to stop and to resolve that doubt in favor of the strictest possible construction of the Constitution.

Now, I assume—and I need not state it as an assumption, because it is a universal law—that there can be no organized legislative body in this country without a lawful presiding officer. A quorum to do business by the Constitution consists of a majority of the Members of the Senate elected to the body and qualified; but a quorum to do business is not a Senate. It requires the presidency of an officer selected according to the Constitution and the law before that quorum is organized into a legislative tribunal. Less than a quorum may meet here and adjourn from day to day and may take orders as against the absentees to compel their attendance; but a quorum to do business, which is to be considered only as a legislative quorum, a quorum under which we can exercise to the full our constitutional powers, is not of itself, without organization, a Senate. There is no Senate that assembles in this Chamber at any time except in the presence of a lawfully constituted presiding officer.

On a recent occasion, when the President pro tempore of the Senate was necessarily absent, Senators met here, more than a quorum, and the Secretary of the Senate presided until we reached an adjournment, and we heard much debate upon the very questions which are up this morning, but no one will say, and our records do not show, that there was a session of the Senate on that day. The records do not even show that the Senate met pursuant to adjournment, and if the records had shown that the Senate met pursuant to adjournment on that day they would have shown what was not true. A body of Senators met here, but in the absence of the Presiding Officer there was no organized Senate, and we declined to organize or to attempt to organize the

Senate, preferring to interpose an adjournment as a more convenient way of getting rid of the question for the time.

Now, if I am right in the proposition that it requires a lawfully constituted presiding officer to be present to organize the Senate as a legislative body, then we must refer to the Constitution to see in what manner that officer is to be chosen, and no officer that does not constitutionally occupy that relation to the Senate of the United States can be considered as the officer designated in the Constitution. In other words, the Senate, after an adjournment on yesterday, would not meet this morning as an organized body in the absence of an officer heretofore lawfully and constitutionally chosen to preside over its deliberations. That is the proposition that is involved in this case. No Senate meets as a Senate after an adjournment, except in the presence and under the presidency of the man who has been chosen in accordance with the Constitution and the rules of this body to preside as President pro tempore, for the President pro tempore is an officer named in the Constitution; his official name is given in the Constitution. We do not create that office by a rule of the Senate or by a statute. It is created by the Constitution. He is an officer in respect of whom there is a method of election prescribed quite as definite and as distinct as in respect to the President of the United States or the Vice President of the United States.

If, then, the Senate can not meet except in the presence of a presiding officer, if there is such a constitutional requirement and also a parliamentary requirement, or a requirement imposed on us by parliamentary law and by our rules, does it not follow that the officer who must be present at any meeting of the Senate after an adjournment must be one chosen by the Senate? If he is not the Vice President of the United States he must be a President pro tempore chosen by the Senate. If the position that I take is the true one—and that is the position that I think is covered by Rule 4 as it stands and has always been recognized by the Senate heretofore—then any attempt on the part of the President of the Senate to delegate his authority to another Senator to preside in his place after an adjournment is contrary to the law and the Constitution.

I do not deny the power of the Presiding Officer of this body to designate a gentleman to take his chair when he desires temporarily to retire. Why so? Because we are in the presence of an organized Senate; the body is here assembled according to the Constitution and the law ready to do business; and it is a rule of parliamentary law, and not in conflict with the Constitution in any sense at all, that he should, during this day and until the next adjournment of the body, delegate his authority as Presiding Officer to some one who may preside here without taking the duties and powers and responsibilities of his constitutional office at the same time. He does not thereby create a President pro tempore of this body; he merely invites some one to substitute him as the Presiding Officer without any violation of the Constitution or the law. But the matter is altogether different when the Senate passes by an adjournment over to a future period of meeting, when it must meet as a Senate or else meet merely as a body of Senators. After every adjournment of this body the Senate can meet in only one of two capacities; one as an organized Senate, and the other as an unorganized body of Senators. If it meets as an organized Senate it must meet in accordance with the action that has been taken and is exhibited upon its own journals, which action has been that the President of the Senate has been chosen by this body to fill the office designated in the Constitution.

Suppose that the Journals of this body did not show that anyone had been chosen heretofore, on yesterday, or on some prior day of this meeting, of the Senate, as President pro tempore, could we meet here and go on with our business until we had completed our constitutional duty of selecting a Presiding Officer? We certainly could not. The Journals do show that a Senator has been elected in accordance with the Constitution and rules of the Senate to preside and hold the office, the constitutional position of President pro tempore. The Journals show that. Read your Journals and you will see what they show. Hon. David Davis, a Senator from Illinois, was on a certain day of the present session chosen President pro tempore in the absence of the Vice President. That Journal remains to-day and is his full and complete authority to preside in this body whenever it shall meet during this session and will be his full and complete authority also to preside when the Senate shall meet at the next session, for that point has been resolved by a deliberate vote of this body after long consideration and debate.

Mr. MAXEY. The Senate is a perpetual body.

Mr. MORGAN. The Senate being a perpetual body, if the Journals show that we have a Presiding Officer selected under the Constitution and in accordance therewith, that we have chosen a man to fill up this constitutional office, then, sir, the Journals can not show that any other person can convene the Senate and call it to order and organize it as a legislative body except that person, until we supply another man under the Constitution and furnish him with the constitutional and record authority also to preside in this body. Can the absent President pro tempore spread upon our Journals without the order of the Senate an appointment of a substitute and so organize the Senate for legislative action? If it is done with our consent, we choose the substitute; if without our consent, the act is a nullity. In order to entitle a man to fill the office of President pro tempore after an adjournment of this body, it is necessary that there shall be a resolution spread upon the minutes of this body showing a constitutional election of that man. And, sir, if I only had doubts about this I would dread to combat a proposition by my vote that has so much of the strength of logic and reasoning as this proposition carries with itself. I would dread it in view of the consequences that may befall the country in the event of some disaster to the President of the United States.

The true theory is this: Whenever the Senate of the United States is met together in pursuance, if you please, of an adjournment from yesterday or an adjournment from the last term, and we do not find the gentleman present who fills the office which the Journals of this body show that he is entitled to fill, our duty then, and it is our first constitutional and unavoidable duty, is to supply that record and supply the man to fill the place.

There may be some inconvenience, not much; a very slight inconvenience; but I believe it to be our solemn duty whenever the Presiding Officer of the Senate is absent at the moment of organization—I mean at the moment when the Senate is to be required to go to work as a legislative body after an adjournment—to provide, according to the Constitution, by a choice, by an election, for the incumbency of that very important office.

I therefore am opposed to all the amendments that have been offered to Rule 4, and I am opposed to any construction of that rule which authorizes the President of the Senate in his absence from this Chamber, after an adjournment, between the adjournment and the time of the next meeting, to designate in writing or orally anyone to fill the office for the time being.

I have thought that it was proper that I should state my views upon this subject to justify the vote that I shall give against all the amendments that are proposed to this rule and to express the opinion that we have no right by any construction whatever of Rule 4, and that we have no right by any construction of our constitutional power to abnegate and abandon the duty that we owe to the country of supplying a constitutional incumbent of this office whenever the gentleman who has been elected to it is absent at the meeting of the Senate after an adjournment.

Mr. GROOME. Mr. President, I rise for the purpose of saying that I agree with the Senator from Alabama in this, that it is unsafe to adopt any of the amendments which have been suggested to our present rule. Under the fifth clause of the third section of the first article of the Constitution it is plain that whenever a quorum of the Senate assembles in this Chamber at a time when it can properly assemble, and the Vice President fails to put in an appearance, he is to be treated as absent in the view of the Constitution of the United States, and the duty of the Senate is imperative to select a President pro tempore in his stead. That President pro tempore when elected, although a constitutional officer, serves simply as a substitute for the Vice President until such time as the Vice President may appear in this Chamber ready to assume the duties of his office. Any rule, therefore, which attempts to give to the temporary incumbent of the Vice President's chair a power which can not be granted to the Vice President—that is, the power, when absent from the Senate, to designate a Senator to preside, or when present to designate one to preside beyond an adjournment—is of very doubtful propriety if not of doubtful constitutionality. I think, therefore, it would be very improper for the Senate to adopt a rule intended to confer upon its temporary Presiding Officer such a power.

But, aside from that, there is another danger lurking in all these amendments which provide that the temporary Presiding Officer of this body may name a Senator to preside in his stead by a designation in writing. We have had in my own State within a very recent period a case lasting through weeks in which the question involved was as to the genuineness of the signature of one of the leading business men of the State; and men who knew him well, men who

knew him and had as close business relations with him as any of us have with the distinguished occupant of the chair to-day, bank presidents, cashiers, and experts in handwriting, disagreed irreconcilably as to whether his alleged signature was genuine or not.

We have seen, too, a more notable instance in this very Chamber and within a comparatively recent period, an instance in which an electoral certificate from one of the States of this Union was accepted by the then temporary Presiding Officer of this body as genuine and which changed the result of a Presidential election, when it is a matter of history to-day that the signatures purporting to be those of three of the electors were not genuine. So it may very well be, if the rule is or shall be made such that the Presiding Officer in his absence can designate one to take his place, that when a letter from the temporary Presiding Officer is read at the Secretary's desk, the question may be raised by some Senator as to whether or not it is a genuine letter, with no proper tribunal to decide that question, and thus may be brought about a condition of great confusion.

I think, therefore, that the true solution of this difficulty is to amend our present rule by making it explicit that the power of the Presiding Officer of the Senate to designate a Senator to discharge the duties of the Chair can only be exercised in the open Senate, and that such designation shall not extend beyond an adjournment. Then there can be no confusion, there can be no trouble, and whenever at the meeting of the Senate the Presiding Officer, be he the Vice President or be he President pro tempore duly elected, is absent, every Member of this body will understand that its first duty is to select a President pro tempore; and in the event of such a situation of affairs existing as that the President pro tempore of this body becomes entitled to occupy the high office of President of the United States, there can be no doubt as to whether or not he has vacated his position by designating another Senator to act in his stead beyond an adjournment, and by absenting himself from the chair upon the reassembling of the Senate after the adjournment.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Michigan [Mr. FERRY] as modified by the Senator from Ohio [Mr. Sherman].

Mr. FRYE. I should like to hear it read.

The ACTING SECRETARY. It is proposed to substitute the following for the report of the Committee on Rules:

"In the absence of the Vice President the Senate shall choose a President pro tempore, and the Presiding Officer when to be temporarily absent may, whether present or absent, designate, in writing or otherwise, a Senator to perform the duties of the Chair for the day; and the President pro tempore may repeat such designation from day to day until the Senate shall otherwise order."

The PRESIDENT pro tempore. The question is on the amendment just read.

The amendment was agreed to.

Mr. BROWN. I should like to inquire of the mover what he means by "or otherwise"? What evidence does the Senate have that the President is not present? What evidence would the Senate have that anybody was designated if the President was not present in the Senate that day, unless it was done by writing?

Mr. FERRY. There is no rule except this rule authorizing the Presiding Officer to call a Senator to the chair when he desires to leave it for a moment or more during the day. This is to provide for that case during the day, that it may be in writing or otherwise; that is, orally, by calling a Senator to the chair.

Mr. BROWN. I would prefer that the designation of the President, if he be not present, should be in writing.

Mr. FERRY. The rule says "present or absent," covering both presence and absence.

Mr. BROWN. Have it read again, please.

The PRESIDENT pro tempore. The rule as proposed to be modified by the amendment will be read.

The Acting Secretary read as follows:

"In the absence of the Vice President the Senate shall choose a President pro tempore, and the Presiding Officer when to be temporarily absent may, whether present or absent, designate, in writing or otherwise, a Senator to perform the duties of the Chair for the day; and the President pro tempore may repeat such designation from day to day until the Senate shall otherwise order."

Mr. BROWN. I would move an amendment providing that if the President is not in the Senate that day, then the designation shall be in writing.

Mr. FERRY. I accept that amendment if it is in my power to accept it.

Mr. INGALLS. Mr. President, whose offspring is this amendment now? The Committee on Rules?

The PRESIDENT pro tempore. No, sir; the Senator from Michigan.

Mr. INGALLS. I should like to ask the Senator from Michigan how the Presiding Officer can be present when he is temporarily absent?

Mr. FERRY. The rule provides for the case when he is absent that he can designate by writing, and when he is present that he can designate orally.

Mr. INGALLS. Let it be read over again.

Mr. FERRY. I think the Senator is a little obtuse this morning.

The Acting Secretary read as follows:

"In the absence of the Vice President the Senate shall choose a President pro tempore, and the Presiding Officer when to be temporarily absent may, whether present or absent——"

Mr. INGALLS. That is, the Presiding Officer, when temporarily absent, may, whether absent or present——

Mr. FERRY. The Presiding Officer doubtless knows whether he will be here on the morrow, and if he is to be absent—not absent, but "to be absent"—he has this power to designate. That little "to be" has a good deal to do with it; those are very suggestive words.

Mr. INGALLS. It is a very inartificially drawn rule as it stands at present. I think it had better be again committed to the Committee on Rules for the purpose of putting it into shape.

Mr. FERRY. I would be satisfied if it was recommitted to the Senator from Kansas to fix the phraseology.

The PRESIDENT pro tempore. The reading has been called for.

The Acting Secretary read as follows:

"In the absence of the Vice President the Senate shall choose a President pro tempore, and the Presiding Officer when to be temporarily absent may, whether present or absent, designate in writing or otherwise a Senator to perform the duties of the Chair for the day; and the President pro tempore may repeat such designation from day to day until the Senate shall otherwise order; and if he is not in the Senate on that day, then the designation shall be in writing."

Mr. INGALLS. On what day is that? It is in a very fine condition for incorporation in the permanent body of the rules now.

The PRESIDENT pro tempore. The question is on the adoption of the amendment just read.

The question being put, it was declared that the ayes seemed to prevail.

Mr. FRYE. Is that the amendment of the Senator from Georgia [Mr. Brown]?

The PRESIDENT pro tempore. Yes, sir.

Mr. FRYE. That would not go into this rule in any shape at all.

Mr. INGALLS. It is just about as good as the rest of it.

Mr. FERRY. My only object is to meet the emergency which occurred the other day and any similar emergency which may hereafter occur, and it was only in that respect that I suggested an amendment to the chairman of the Committee on Rules and the committee itself. Having had some experience myself on that committee, I considered it was due to that committee to make such suggestions as might occur to other Senators. I think the Senator from Maine, the chairman, was not present when this occurred. That is my recollection. I may be wrong about it.

Mr. FRYE. I was not.

Mr. FERRY. He states that he was not present. Therefore, I felt it my duty, as I thought it was my right, to make any suggestion which I thought would perfect the rule. Now, as the Senate have by vote rather leaned toward my amendment, I suggest, and if the Chair will entertain it I will move, that all of these amendments be committed to the Committee on Rules. Now they have the sense of the Senate and will doubtless frame language that will accord with the sense of the Senator from Kansas and present for our adoption a perfected rule.

The PRESIDENT pro tempore. It is moved to recommit the proposed rule to the Committee on Rules.

The motion was agreed to.

Mr. GORMAN. I offer the following for reference to the Committee on Rules.

"In the absence of the Vice President the Senate shall choose a President pro tempore, who shall have the right to name in open Senate, or if absent by writing, a Senator to perform the duties of the Chair; but such substitution shall not extend beyond an adjournment."

The PRESIDENT pro tempore. This will be referred also to the Committee on Rules.

FORTY-SEVENTH CONGRESS, SECOND SESSION.

Monday, December 4, 1882 (Journal, p. 6).

The Hon. David Davis, President pro tempore of the Senate, resumed the chair.

Tuesday, February 27, 1883 (Journal, pp. 427–428).

The President pro tempore laid before the Senate the following letter:

VICE PRESIDENT'S CHAMBER,
February 26, 1883.

To the Senate:

In view of possible exigencies that might affect the public service, I deem it proper to give notice of my intention to resign the office with which the Senate honored me at noon on Saturday the 3d of March proximo.

DAVID DAVIS.

Which was read.

Friday, March 2, 1883 (Journal, p. 459).

Mr. Anthony submitted the following resolution; which was considered by unanimous consent and agreed to:

Whereas the President pro tempore has signified his purpose to resign the chair at 12 o'clock to-morrow: Therefore,

Resolved, That at that hour the Senate will proceed to the election of a President pro tempore.

Saturday, March 3, 1883 (Journal, pp. 524–525).

The hour of 12 o'clock m. having arrived, in pursuance to notice given, the President pro tempore addressed the Senate as follows:

SENATORS: Gratitude fails to express the feeling which moves me in responding to the generous expressions in the resolution you have adopted.

* * * * * * *

I shall carry away with me, and cherish as a solace in private life, the cordial friendships formed here. It will be a constant pleasure to reflect upon, that no jar has disturbed the administration of the high office I now resign, bidding an affectionate farewell to every Member of the Senate, and to every officer connected with it.

Mr. Davis of Illinois thereupon retired from the chair and took his seat upon the floor of the Senate.

Mr. Anthony submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That George F. Edmunds, a Senator from the State of Vermont, is hereby chosen President pro tempore.

The oath prescribed by the act of July 2, 1862, having been administered to Mr. Edmunds by Mr. Anthony, he took the chair as President pro tempore of the Senate.

FORTY-EIGHTH CONGRESS, FIRST SESSION.

Thursday, December 13, 1883 (Journal, p. 83).

Mr. Edmunds submitted the following resolution for consideration:

Resolved, That the Senate now proceed to elect a President pro tempore of the Senate.

Tuesday, December 18, 1883 (Journal, p. 98).

The President pro tempore notified the Senate of his intention of being absent from the Senate for the next two succeeding days, and asked unanimous consent for leave to designate a Senator to perform the duties of the chair during such temporary absence, which was granted.

Whereupon the President pro tempore designated Mr. George F. Hoar, a Senator from the State of Massachusetts, to perform the duties of the chair during his absence.

Wednesday, December 19, 1883 (Journal, p. 98).

In pursuance of the order of the Senate of yesterday, authorizing the President pro tempore to designate a Senator to perform the duties of the chair during his absence for two days, Mr. Hoar took the chair.

Monday, January 14, 1884 (Journal, p. 166).

On motion by Mr. Sherman,

The Senate proceeded to consider the resolution submitted by Mr. Edmunds, December 13, 1883, that the Senate proceed to elect a President pro tempore; and

The resolution was agreed to.

Mr. Sherman then submitted the following resolution:

Resolved, That Henry B. Anthony, a Senator from the State of Rhode Island, is hereby chosen President pro tempore of the Senate.

The Senate proceeded to consider the resolution; and

On motion by Mr. Pendleton to amend the resolution by striking out the words "Henry B. Anthony, a Senator from the State of Rhode Island," and inserting in lieu thereof the words "Thomas F. Bayard, a Senator from the State of Delaware."

It was determined in the negative.

On the question to agree to the resolution,

It was determined in the affirmative.

Whereupon Mr. Anthony, having been invited to come forward and take the oath prescribed by law, arose and in his place declined the office to which he had been chosen.

On motion by Mr. Sherman, that further proceedings under the resolution to proceed to elect a President pro tempore be suspended,

After debate,

Mr. Sherman withdrew the motion and submitted the following resolution:

Resolved, That George F. Edmunds, a Senator from the State of Vermont, is hereby chosen President pro tempore of the Senate.

The Senate proceeded to consider the resolution; and

On motion by Mr. Bayard to amend the same by striking out the words "George F. Edmunds, a Senator from the State of Vermont," and in lieu thereof inserting the words "George H. Pendleton, a Senator from the State of Ohio."

It was determined in the negative, { Yeas---------- 24 / Nays---------- 32

(Roll call omitted.)

So the amendment was not agreed to.

On the question to agree to the resolution,

It was determined in the affirmative;

Whereupon the oath prescribed by law was taken and subscribed by Mr. Edmunds before A. H. Garland, a Senator from the State of Arkansas.

(See Congressional Record, pp. 373–374.)

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. SHERMAN. I move that the Senate proceed to the consideration of a resolution offered by the occupant of the chair, that the Senate now proceed to elect a President pro tempore.

The PRESIDENT pro tempore. The Senator from Ohio asks that the Senate now consider, under the order of resolutions, the resolution offered by Mr. Edmunds, of Vermont, on the 13th day of December last, that the Senate now proceed to elect a President pro tempore. If there be no objection the resolution will be laid before the Senate.

The resolution was read as follows:

"*Resolved*, That the Senate now proceed to elect a President pro tempore of the Senate."

The PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution was agreed to.

Mr. SHERMAN. I submit for adoption the following resolution in connection with the order just made:

"*Resolved*, That Henry B. Anthony, a Senator from the State of Rhode Island, is hereby chosen President pro tempore of the Senate."

The PRESIDENT pro tempore. The question is on agreeing to the resolution.

Mr. SHERMAN. Mr. President, I think the peculiar circumstances of the case justify me in saying a word in favor of this resolution. The gentleman named in the resolution is the Senator who has longest occupied a seat in this body of all those who are here associated with us. He has been five times elected by his State a member of the Senate and is now serving his fifth term. He has been many times elected by common consent President pro tempore of the Senate, and has faithfully and ably discharged the duties of that position whenever they have fallen to him. I think under these circumstances it would be a graceful act for the Senate, I hope with unanimity, to elect him President pro-tempore of the Senate.

Mr. PENDLETON. Mr. President, without meaning to dissent from the opinion expressed by the Senator from Ohio as to the qualifications, fitness, integrity, ability, and patriotism of the gentleman named in the resolution, I move to strike out the name of Henry B. Anthony, of Rhode Island, and to insert that of Thomas F. Bayard, of Delaware.

The PRESIDENT pro tempore. The Senator from Ohio [Mr. Pendleton] moves to amend the resolution. The amendment will be reported.

The Secretary. In line 1 of the resolution it is proposed to strike out the words "Henry B. Anthony, a Senator from the State of Rhode Island," and to insert the words "Thomas F. Bayard, a Senator from the State of Delaware."

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Ohio. [Putting the question.] The noes appear to have it. The noes have it. The amendment is disagreed to. The question recurs on agreeing to the resolution.

The resolution was agreed to.

The PRESIDENT pro tempore. The Senator from Rhode Island will please come forward to the chair and receive the oath the law requires him to take.

Mr. ANTHONY. Mr. President and Senators, I thank you for this distinguished honor. It would be affectation in me to say that it has come entirely unexpected, for I have been for some time aware of your kind and flattering purpose. It would be still greater affectation in me to deny that the acceptance of it would give me pride and pleasure. But the state of my health, which you all know is precarious, warns me not to assume any labor that I can consistently and honorably avoid; and although I would not hesitate to undertake any burden laid upon me by my brother Senators, not even at the peril of health, if it was thought that for any reason I could more appropriately perform it than another, yet I think it is no shirking of duty, no evidence of cowardly indolence in me, to decline a position which so many Senators can fill with equal and greater advantage to the Senate and to the country.

Therefore, Senators with a heart overflowing with gratitude for all your kindness to me in this matter, I most respectfully decline the position to which you would elevate me.

The PRESIDENT pro tempore. The Senator from Rhode Island declines to accept the office to which he has been elected. The Chair awaits a further motion for the execution of the order of the Senate.

Mr. SHERMAN. There being no vacancy in the office, I think no further action is necessary. It seems to me so.

The PRESIDENT pro tempore. The Chair agrees with the view of the Senator from Ohio that there is no vacancy in the office, but the Senate has ordered to now proceed to elect, and as to whether the election that has taken place would be considered to be an execution of the order the Chair is in some doubt. Therefore the Chair has laid the matter before the Senate.

Mr. SHERMAN. To save all questions in regard to that matter I submit a resolution, although I think it is unnecessary.

The PRESIDENT pro tempore. The Senator might move to dispense with the further execution of the order, if he desires to pursue that course.

Mr. SHERMAN. I ask that the resolution I offer be first read.

The PRESIDENT pro tempore. The Senator from Ohio offers a resolution which will be read.

The Chief Clerk read as follows:

"*Resolved*, That George F. Edmunds, a Senator from the State of Vermont, is hereby chosen President pro tempore of the Senate."

Mr. SHERMAN. As the passage of that resolution would seem to imply that there was an actual vacancy, and would make it necessary to send a message to the President and to the House of Representatives, I do not think it necessary. Therefore I move that further proceedings under the order just adopted relating to the election of a President pro tempore of the Senate be dispensed with.

The PRESIDING OFFICER (Mr. Garland in the chair). The question is on the motion of the Senator from Ohio.

Mr. BAYARD. The resolution is open to amendment?

The PRESIDING OFFICER. The Senator from Ohio has withdrawn his resolution, and has made a motion that further proceedings under the order of the Senate be suspended.

Mr. BAYARD. Then the vote is not upon the adoption of the resolution just submitted?

The PRESIDING OFFICER. It is not.

Mr. RANSOM. I simply rose to inquire of the Senator from Ohio in what way he proposes that the Senate can proceed without a President pro tempore of the Senate.

Mr. SHERMAN. There is a President pro tempore of the Senate. The Senator from Vermont [Mr. Edmunds] is now President pro tempore of the Senate. If the Senators on the other side really desire to have him reelected, of course it can be done as a matter of form; but I do not think it is proper to pursue that course, because it would involve the necessity of sending a message to the President and a message to the other House, and it would imply that there had been a point of time when the Senator from Vermont was not President pro tempore of the Senate. If the Senators on the other side desire to repeat the organization in the manner proposed by me in the first instance, I will follow their lead; but if not, I simply move to postpone any further execution of the order.

Mr. HOAR. Mr. President, it seems to me that the raising of doubt by any Senator in regard to so grave and important a matter is enough to make it proper to remove the doubt. I entertain no doubt myself that if this resolution can be withdrawn and the motion last suggested by the Senator from Ohio adopted, the organization of the Senate will be complete; but the suggestion of the Senator from North Carolina [Mr. Ransom] implies that somebody hereafter or somebody now entertains a different opinion; and it seems to me therefore in order if there should be any grave constitutional exigency that the organization of the Senate shall be beyond a doubt, that it is the safest way to proceed as originally proposed by my honorable friend from Ohio. I trust, therefore, he will withdraw his suggestion and that we shall proceed to an election. It can certainly do no harm.

Mr. DAWES. I rise simply to add that the record of the Senate now stands that the Senate has indicated a desire to have some other gentleman its presiding officer, and therefore it is entirely proper that the record should be put right by proceeding to an election. I should not think it would be entirely comfortable for the presiding officer to continue after such a record, although everybody knows the circumstances under which it is made as having no bearing upon the propriety of his continuing in the office. But such is the record, and therefore it seems to me that it is very proper that we should proceed to the election of a President pro tempore after having indicated by a majority our desire to have some one else in the chair.

Mr. INGALLS. Mr. President, I differ toto cælo from the opinion expressed by the Senator from Massachusetts on my right [Mr. Dawes]. It has always been held that the question of the Presidency pro tempore of the Senate was absolutely at the control of the body, and could be exercised hour by hour if a majority of the Senate so chose. I hold that the adoption of the resolution electing the honorable Senator from Rhode Island to the position vacated the chair so far as the previous incumbent was concerned, and that we are at this time, by the action of a majority of the body, without a President pro tempore. I should therefore hope that in the expression of the authority that has been so often asserted by this body with regard to its Presidency pro tempore, we no proceed to act upon the resolution submitted by the Senator from Ohio and elect the Senator named in that resolution to the place that is now vacant.

Mr. DAWES. Mr. President, I differ toto cælo from the Senator from Kansas in the idea that we have vacated the chair by the simple passage of that resolution. The Senator from Rhode Island has declined to accept the position. Until a new President pro tempore has accepted and qualified we have not put anybody in that place, and it is because the law of the Senate is that we hold this office every day in our power to change, and it is because simply the record stands so, without affecting the legal title of the Senator from Vermont to that office, that I suggested that it would be more comfortable by a new vote to show to the Senate that the Senator from Vermont was not holding office after a majority of the Senate had indicated a desire to have some one else. The Senator from Vermont understands that I do not mean to intimate that a majority of the Senate is not to-day just as well disposed to have him hold the place as they were, but the record does not carry this explanation along with it.

Mr. BAYARD. Mr. President, I think the Senator from Kansas has truly stated the present condition of the Senate and that under our rules we are proceeding only by unanimous consent, that if strictly our rules were followed the Secretary of the Senate would now be presiding until a President pro tempore was again chosen. Our honored friend from Rhode Island was duly elected by the vote of the Senate its President pro tempore, and ipso facto that avoided any title that preceded his. As he has declined to assume the duties of that place there is a vacancy, and that vacancy ought in all regularity to be filled, and I doubt not will be filled in accordance with the suggestion of the resolution of the Senator from Ohio read just now before the Senate; that is, by the election of the honorable Senator from Vermont. But I am clear that the presence of the Senator now in the chair is only by unanimous consent of the Senate and that it will be proper that we should proceed to vote to fill that place made vacant by the resignation or the declination of the Senator from Rhode Island.

Mr. SHERMAN. Mr. President, to remove a doubt, where there is no doubt in my mind, I will renew again the resolution that I offered a while ago and withdraw the motion to suspend.

The PRESIDING OFFICER. The Senator from Ohio withdraws his motion and offers a resolution which will be read.

The Chief Clerk read as follows:

"*Resolved*, That George F. Edmunds, a Senator from the State of Vermont, is hereby chosen President pro tempore of the Senate."

Mr. BAYARD. That resolution is open to amendment. I move to strike out the name of George F. Edmunds, of Vermont, and substitute the name of George H. Pendleton, of Ohio, and upon that I ask for the yeas and nays.

Mr. JONES of Florida. The Senator from Kansas a while ago stated that it has been the custom for this body to exercise its power of removing its presiding officer. I think that that rule has been one of very recent date. I think, sir, that the history of this body will show that the best minds that ever occupied seats in it were until a few years ago clearly of the opinion that when the Senate elected a Senator to the position of President pro tempore of this body in the absence of the Vice President of the United States or when he entered the presidential office, he should hold until the office became again constitutionally vacant. That was the deliberate opinion of no less a man than William H. Seward, expressed on this floor.

I happened to be somewhat a pioneer on this question when the then Senator from Illinois, Mr. Davis, was elected the last time over the head of my distinguished friend from Delaware [Mr. Bayard]. I then stated to the Senate my opinion that when the Senator from Delaware was elected there was a vacancy within the meaning of the Constitution, and when the Senator from Illinois was elected there was none. So in this case I was prepared to hear that the Senator from Vermont had resigned his position as presiding officer, in which case there would have been clearly a vacancy for the election that occurred a while ago; but there was no vacancy. Here is the language of the Constitution on the subject, which is very clear:

"The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States."

There was a vacancy when the Senator from Vermont was elected. There was no vacancy when the Senator from Rhode Island was elected.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Delaware [Mr. Bayard], upon which he asked for the yeas and nays.

The yeas and nays were ordered, and

The result was announced—yeas 24, nays 32.

So the amendment was rejected.

The PRESIDING OFFICER. The question recurs on the adoption of the resolution.

The resolution was agreed to.

Mr. EDMUNDS advanced to the chair and said: If the occupant of the chair will administer the oath to me, it will remove all question.

The oath of office was administered by Mr. Garland to Mr. Edmunds and subscribed by him.

Mr. SHERMAN. I offer the following resolution:

"*Resolved*, That the Secretary of the Senate inform the President of the United States and the House of Representatives that the Senate has chosen Hon. George F. Edmunds, a Senator from the State of Vermont, President pro tempore of the Senate."

Mr. GROOME. I wish to announce that I was temporarily out of the Chamber when the vote was taken on the amendment of the Senator from Delaware to the resolution of the Senator from Ohio. If I were present I should have voted for the Senator from Ohio [Mr. Pendleton].

The PRESIDING OFFICER (Mr. Garland in the chair). The question is on the adoption of the resolution of the Senator from Ohio.

The resolution was agreed to.

The President pro tempore, George F. Edmunds, occupied the chair during this entire session, with an occasional designation of a Senator during his temporary absence to perform the duties of the chair, as follows:

Tuesday, January 15, and Wednesday, January 16, 1884 (Journal, p. 172), John J. Ingalls.

Tuesday, February 12, 1884 (Journal, p. 294), William B. Allison.

Tuesday, February 26, 1884 (Journal, p. 349), Henry B. Anthony.
Tuesday, March 4, 1884 (Journal, p. 380), A. H. Garland.
Friday, March 21, 1884 (Journal, p. 447), Mr. John Sherman designated for three days and occupied the chair.
Monday, March 24, 1884 (Journal, p. 452), Tuesday, March 25, 1884 (Journal, p. 460), Wednesday, March 26, 1884 (Journal, p. 465), and Monday, April 14, 1884 (Journal, p. 524), John J. Ingalls.
Tuesday, May 1, 1884 (Journal, p. 602), William B. Allison.
Monday, May 19, 1884 (Journal, p. 655), Thursday, June 19, 1884 (Journal, p. 788), and Friday, June 20, 1884 (Journal, p. 794); Angus Cameron.
Friday, June 27, 1884 (Journal, p. 845), A. H. Garland.
Saturday, June 28, 1884 (Journal, p. 855), Angus Cameron.

FORTY-EIGHTH CONGRESS, SECOND SESSION.

The President pro tempore, George F. Edmunds, occupied the chair during this entire session with an occasional designation of a Senator during his temporary absence to perform the duties of the chair, to wit:
Wednesday, December 10, 1884 (Journal, p. 43), John Sherman.
Tuesday, December 16, 1884 (Journal, p. 58), John J. Ingalls.
Saturday, January 17, 1885 (Journal, p. 144), and Wednesday, January 21, 1885 (Journal, p. 160), William B. Allison.
Thursday, January 29, 1885 (Journal, p. 193), George H. Pendleton.
Tuesday, February 10, 1885 (Journal, p. 257), and Wednesday, February 25, 1885 (Journal, p. 372), William B. Allison.
At the specially called session of the Senate following the close of the Forty-eighth Congress, Thomas A. Hendricks was Vice President. No President of the Senate pro tempore was elected.
The Vice President, Thomas A. Hendricks, died November 25, 1885, before the meeting of the Forty-ninth Congress, and no President pro tempore of the Senate had been elected at the special session of the Senate following the close of the Forty-eighth Congress.

FORTY-NINTH CONGRESS, FIRST SESSION.

Monday, December 7, 1885 (Journal, pp. 6–7).

The Secretary, Mr. Anson G. McCook, called the Senate to order.
Mr. Edmunds submitted the following resolution:

Resolved, That John Sherman, a Senator from the State of Ohio, be, and he hereby is, chosen President pro tempore of the Senate.

The Senate proceeded to consider the said resolution; and
On motion by Mr. Voorhees to amend the same by striking out the words "John Sherman, a Senator from the State of Ohio," and inserting in lieu thereof the words "Isham G. Harris, a Senator from the State of Tennessee,"

It was determined in the negative, {Yeas 29 / Nays 34}

(Roll call omitted.)
So the amendment was not agreed to.

On the question to agree to the resolution,
It was determined in the affirmative;
Whereupon the oath prescribed by law was taken and subscribed to by Mr. Sherman before George F. Edmunds, a Senator from the State of Vermont, and he thereupon took the chair, and addressed the Senate as follows:

SENATORS: I return you my grateful thanks for the high honor you have conferred upon me. * * * I can only say, Senators, that while I hold this position I will endeavor to the utmost of my ability to be just and impartial, and I invoke from each of you assistance and forbearance.

Tuesday, January 12, 1886 (Journal, p. 165).

The President pro tempore stated that he would be absent from the Senate during the remainder of the week, and asked unanimous consent that during his absence Mr. Joseph R. Hawley, a Senator from the State of Connecticut, may occupy the chair; which was granted.

Wednesday, January 13, 1886 (Journal, p. 165).

In pursuance of the order of the Senate yesterday Mr. Hawley took the chair.

Thursday, January 14, 1886 (Journal, p. 172).

Nothing said about Mr. Hawley again taking the chair, but presume he did, the President pro tempore appearing Monday, January 18, 1886. (Journal, p. 175.)
(Congressional Record, p. 642, mentions the fact.)

FORTY-NINTH CONGRESS, SECOND SESSION.

Monday, December 6, 1886 (Journal, p. 6).

The Hon. John Sherman, President pro tempore of the Senate, resumed the chair.

Tuesday, February 22, 1887 (Journal, p. 400).

The President pro tempore laid before the Senate the following communication:

To the Senate of the United States:

SENATORS: My office as President pro tempore of the Senate will necessarily terminate on the 4th of March next with my present term as Senator. It will promote the convenience of the Senate and the public service to elect a Senator as President pro tempore whose term extends beyond that date, so that he may administer the oath of office to Senators-elect and aid in the organization. I therefore respectfully resign that position, to take effect at 1 o'clock p. m. on Saturday next, February 26.

Permit me in doing so to express my heartfelt thanks for the uniform courtesy and forbearance shown me while in the discharge of my duties as Presiding Officer by every Member of the Senate.

Very truly, yours, JOHN SHERMAN.

The communication was read and placed on file.

Thursday, February, 24, 1887 (Journal, pp. 421–422).

Mr. Edmunds submitted the following resolution for consideration; which was ordered to be printed:

Resolved, That John J. Ingalls, a Senator from the State of Kansas, be, and he hereby is, chosen President pro tempore of the Senate, to take effect at 1 o'clock, afternoon, on the 26th instant, at which time the resignation of John Sherman, the President pro tempore of the Senate, will take effect.

Friday, February 25, 1887 (Journal, p. 436).

The President pro tempore laid before the Senate the resolution yesterday submitted by Mr. Edmunds, as follows:

Resolved, That John J. Ingalls, a Senator from the State of Kansas be, and he hereby is, chosen President pro tempore of the Senate, to take office at 1 o'clock, afternoon, on the 26th instant, at which time the resignation of John Sherman, the present President pro tempore of the Senate, will take effect.

The Senate proceeded to consider the resolution; and

On motion by Mr. Cockrell to amend the same by striking out the words "John J. Ingalls, a Senator from the State of Kansas," and inserting in lieu thereof the words, "Isham G. Harris, a Senator from the State of Tennessee,"

It was determined in the negative, { Yeas ---------- 26 / Nays ---------- 39

(Roll call omitted.)

So the amendment was not agreed to.

On the question to agree to the resolution,

It was determined in the affirmative.

Saturday, February 26, 1887 (Journal, pp. 453–454).

The hour designated in his letter of resignation of the 22d instant having arrived, the President pro tempore addressed the Senate as follows:

Before administering the oath of office to his successor the occupant of the chair desires again to return to his fellow Senators his grateful acknowledgments for their kind courtesy and forbearance in the past. * * * I now invite him [Mr. Ingalls] to come forward and take the oath of office prescribed by law.

Mr. Ingalls thereupon, in pursuance of the resolution adopted yesterday, advanced to the desk of the President pro tempore, and the oath of office having been administered to him, on taking the chair, he addressed the Senate as follows:

SENATORS: I must inevitably suffer disparagement in your estimation by contrast with the parliamentary learning and skill, the urbanity, and accomplishments of my illustrious predecessor, but I shall strive to equal him in devotion to your service, and I shall endeavor, if that be possible, to excel him in grateful appreciation of the distinguished honor of your suffrages.

FIFTIETH CONGRESS, FIRST SESSION.

Monday, December 5, 1887 (Journal, p. 6).

The Hon. John J. Ingalls, President pro tempore of the Senate, resumed the chair.

(Mr. Ingalls occupied the chair during this entire session excepting on three occasions.)

Monday, June 11, 1888 (Journal, p. 942), he designated Mr. C. F. Manderson, a Senator from the State of Nebraska, to perform the duties of the Chair.

Monday, August 20, 1888 (Journal, p. 1305), Mr. George F. Hoar.

Thursday, September 27, 1888 (Journal, p. 1466), Mr. Charles F. Manderson.)

FIFTIETH CONGRESS, SECOND SESSION.

Monday, December 3, 1888 (Journal, p. 6).

The Hon. John J. Ingalls, President pro tempore of the Senate, resumed the chair.

(Mr. Ingalls served as President pro tempore during this entire session.)

SESSION OF THE SENATE SPECIALLY CALLED MONDAY, MARCH 4, 1889.

(Following the Fiftieth Congress.)

Thursday, March 7, 1889 (Journal, 50th Cong., 2d sess., pp. 563–564).

The Secretary called the Senate to order and read the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, March 6, 1889.

DEAR SIR: Please state to the Senate that I shall be absent from its session to-morrow.

Respectfully, yours, LEVI P. MORTON.

Hon. ANSON G. MCCOOK,
Secretary United States Senate.

Whereupon, Mr. Sherman submitted the following resolution:

Resolved, That in the absence of the Vice President, Mr. John J. Ingalls be, and he is hereby, chosen President pro tempore of the Senate.

The Senate proceeded to consider the resolution, and

On motion by Mr. Harris to amend the same by striking out the name "John J. Ingalls" and in lieu thereof inserting "Daniel W. Voorhees."

It was determined in the negative, {Yeas 27 / Nays 29}

(Roll call omitted.)

So the amendment was not agreed to.

The question recurring on agreeing to the resolution,

It was determined in the affirmative.

On motion by Mr. Hoar, and by unanimous consent,

Ordered, That the oath of office be administered to the President pro tempore elect by Mr. John Sherman, a Senator from the State of Ohio.

The oath prescribed by law was accordingly administered to Mr. Ingalls, and he thereupon took the chair.

Wednesday, March 20, 1889 (Journal, p. 571).

Mr. Butler submitted the following resolutions for consideration, which were ordered to be printed:

Resolved, That the tenure of the President pro tempore does not expire at the meeting of Congress after a recess, the Vice President having appeared to take the chair.

(2) *Resolved*, That the presence of the Vice President does not have the effect to vacate the office of President pro tempore.

(3) *Resolved*, That the office of the President pro tempore be held at the pleasure of the Senate.

Saturday, March 23, 1889 (Journal, p. 573).

The Vice President laid before the Senate the resolutions submitted by Mr. Butler on the 20th instant relative to the tenure of office of the President pro tempore.

When on motion by Mr. Allison,

The Senate proceeded to the consideration of executive business.

Wednesday, March 27, 1889 (Journal, p. 574).

On motion by Mr. George,

The Senate proceeded to consider the resolutions submitted by Mr. Butler on the 20th instant relative to the tenure of office of the President pro tempore; and

After debate,

On motion by Mr. Butler,

Ordered, That the resolutions be referred to the Committee on Privileges and Elections.

Mr. Evarts submitted the following resolution; which was referred to the Committee on Privileges and Elections:

Resolved, That it is competent for the Senate to elect a President pro tempore who shall hold the office during the pleasure of the Senate and until another is elected, and shall execute the duties thereof when the Vice President is absent.

(See Congressional Record, 51st Cong., 1st session, vol. 21, pt. 1, pp. 43–52.)

TENURE OF PRESIDENT PRO TEMPORE.

Mr. GEORGE. I suppose that this is the appropriate time for me, in accordance with the notice I gave yesterday, to call up the resolutions offered some days ago by the Senator from South Carolina [Mr. Butler] for the purpose of submitting some remarks thereon. I ask that the resolutions may be read.

The VICE PRESIDENT. The resolutions will be read.

The Chief Clerk read the resolutions submitted by Mr. Butler on the 20th instant, as follows:

"*Resolved*, That the tenure of the President pro tempore does not expire at the meeting of Congress after a recess, the Vice President having appeared to take the chair.

"2. *Resolved*, That the presence of the Vice President does not have the effect to vacate the office of President pro tempore.

"3. *Resolved*, That the office of the President pro tempore be held at the pleasure of the Senate."

The VICE PRESIDENT. The question is on agreeing to the resolutions, on which question the Senator from Mississippi [Mr. George] is entitled to the floor.

Mr. GEORGE. Mr. President, in order to understand the question presented by the resolutions of the Senator from South Carolina it is necessary to consider the force and meaning of two clauses of the Constitution. The first is Article I, section 3, clause 4, which reads as follows:

"The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided."

It will be noted that this clause of the Constitution does not say that the Vice President of the United States shall preside over the Senate, but that he "shall be President of the Senate," and it will be seen before I get through that there is a marked difference between this clause of the Constitution and that other clause which provides that the Chief Justice of the United States shall preside over the deliberations of the Senate when they are trying the impeachment of the President of the United States. In that clause the language is,

"The Chief Justice shall preside," not that he shall be President of the Senate, but that as the Chief Justice of the United States he shall preside for the time being over the Senate.

The next clause of the Constitution which it is necessary to consider is clause 5 of the third section of the first article, which reads as follows:

"The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States."

It is argued that the language "shall choose * * * a President pro tempore in the absence of the Vice President," means only to fix the time or the occasion in which the election shall be made, and does not in any way fix the tenure of the office of President pro tempore.

Such was the argument of Senator Collamer in 1861 when this question was before the Senate.

Under this view, the Senate having elected a President pro tempore during a particular absence of the Vice President, the person so elected not only acts as President of the Senate during that particular absence of the Vice President, but after his return still holds his office with power to act during any subsequent absence of the Vice President whenever and as often as they may occur.

This construction grants power to the Senate to elect a regular permanent officer, who shall stand empowered, whenever the occasion—the absence of the Vice President—may occur, to act in his stead. If it had been the intention of the framers of the Constitution to provide for such an officer who should sit in place of the Vice President whenever the latter should be absent, it seems unaccountable that this power to elect should be vested only when the Vice President was absent and when the Senate was unorganized. If such a regular and permanent substitute had been intended so as to prevent a hiatus in the organization of the Senate, it would seem appropriate that such election should be made at any time provided by the rules of the Senate, and that these rules would require a selection to be made to anticipate the necessity, just as it is now argued that the selection when made should hold good to meet all subsequent occasions when the Vice President is absent.

It is argued, however, the literal meaning of the terms used in the Constitution, "shall choose a President pro tempore in the absence of the Vice President," embraces only the idea of the occasion of the election and has no reference to the tenure of the person elected.

But, if we are to stick to the literal meaning of the terms used, the construction contended for can not be maintained. Literally the terms contain a command that the Senate "shall elect a President pro tempore in the absence of the Vice President." This command must be obeyed as it is expressed. The Constitution does not say "shall elect" in the first absence of the Vice President, or in the second or third or any other designated absence, but in the absence—that is, any absence. And thus it is established that whenever an absence occurs there must be an election.

But I do not mean to rest the argument upon any mere strict literal interpretation of the Constitution. I rely on that merely to overturn a conclusion claimed to be warranted by such an interpretation. A constitution, like a statute, should be construed so as to give full force and effect to the words used—taken in their ordinary signification—giving to technical words their technical meaning. And all words should be construed with reference to the context without doing violence to their plain meaning. They should be construed with reference also to all other parts of the instrument, so that the whole may be harmonious and consistent.

If an appropriate word be used generally in the Constitution to express a clear and distinct idea, the same in all instances in which the word is used, it will be conclusively presumed that when another word is used, which of itself has a clear and distinct and different meaning in its primary and ordinary sense, it was not used in the sense of the first word, even though the last sense may be its secondary or remote signification. For it can not be supposed that in a solemn instrument like a constitution, wherein every word has been well and carefully weighed, its framers having adopted and used a particular word to express a particular idea, whenever such idea is expressed, would abandon that word in one place only and for the expression of the same idea use another word which, though capable in a secondary sense of expressing that idea, yet generally has a different signification.

Taking the words "Vice President" and "President pro tempore," we find the former used in the Constitution several times and the latter only once, to wit, in the clause under consideration.

The former, Vice President, is always used to designate a permanent or continuing officer, whose main duty is to act, according to the plain meaning of the word, in the place or instead of another, being his full substitute when an occasion shall arise for such action. He is to all intents and purposes Vice President, though he may never act as President. The office consists in his legal capacity to act, when occasion for such action arises, and in action then and only then. The office itself is not called into being in the first instance when such occasion arises, as is the President pro tempore, and does not cease when such occasion shall pass away. The officer is selected at the same time and in the same manner as the President of the United States, to act as a substitute for him, fully and completely, whenever and as often as the constitutional occasion for such action may arise. When not so acting he is required by the Constitution to perform other duties, which duties are in no sense vicarious, but original; he is "President of the Senate."

It will be noted that the Constitution in fixing a presiding officer of the Senate does not do so by an enumeration and definition of the powers of the Vice President. It does not say that it shall be the duty of the Vice President to preside over the Senate, or that he shall act as President of the Senate. The difference between the Constitution on this subject and that clause providing for the presidency of the Chief Justice in an impeachment of the President is marked. There it is said, "The Chief Justice shall preside"—preside as Chief Justice over the Senate. In the clause under consideration the provision is: "The Vice President of the United States shall be President of the Senate." Another and distinct office is given to him. He holds both. The two offices are annexed or joined together in the same officer. But they are distinct; so distinct, in fact, that when he comes to discharge the vicarious duties of the one he is not allowed to discharge the duties, which are original, of the other. When he acts as President of the United States he can not act as President of the Senate. In his one character he is "Vice President of the United States." so denominated in the Constitution, and has only vicarious powers. In the other he is named "President of the Senate," and as such has original powers. In this last character he is also an officer of the Senate, and is so denominated by the strongest implication, in that the officers of the Senate beside him are called "their other officers" in clause 5 of the same section and article.

Up to this point we find that the Constitution uses the word "President" both in designating the Chief Magistrate of the United States and the presiding officer of the Senate. In both cases the word indicates an officer having original powers. We find also the words "Vice President" used to describe an officer selected regularly at stated times, having a continuous tenure but with no duties whatever as such under that name, except to act vicariously as President of the United States in the contingencies named in the Constitution.

Thus the word "President," both as applied to the Chief Magistrate of the United States and to the moderator or speaker of the Senate, constitutionally means an officer having original powers and duties; and the words "Vice President" as plainly means a permanent or continuing officer selected at stated intervals, with fixed and stated tenure, but having no absolute and original powers, being merely an officer designated to act vicariously in the place and stead of the President in certain contingencies whenever they shall happen. This idea is anexed by the Constitution indissolubly and indubitably to the words "Vice President." About this there can be no dispute or doubt.

When we come to the clause under consideration, providing a President pro tempore for the Senate, we find another provision for a vicarious officer—one to have no power. except upon a contingency, to wit, the absence of the original officer provided by the Constittuion to perform originally the duties which his absence devolves on the substitute.

There are but two modes of providing this substitute, or rather there are but two kinds of substitute which can be provided. The one, by a regular officer selected at stated periods, who should, as the Vice President of the United States does, stand ready to discharge vicariously the duties of the original officer, whenever and as often as a necessity as prescribed in the Constitution should arise for such substituted action, and the other to provide temporarily on each occasion of the necessity a substitute to act only for the time being, or, to express the same idea differently, the time during which the necessity may exist.

To express the idea of the first kind—a regular substitute—the Constitution has uniformly used the words "Vice President." That is the constitutional

language to express the constitutional idea of a permanent substitute to act as occasions might arise for contingent and temporary action on the part of the substitute.

When, therefore, the framers of the Constitution came to consider the clause under consideration they necessarily had in their minds these two kinds of substitutes, and they must choose between them. If they decided to provide the first kind, which I shall call a regular permanent substitute, they had language fit and appropriate for that purpose, which they had already used to express that idea. As clearness in expression, the use of language which would exactly and precisely express the idea intended, was the highest duty of the framers of the Constitution, it is unaccountable that they should in this instance alone discard fit and appropriate language which they had already used to express a certain and plain idea, and for the purpose of expressing the same idea resort to other language which, if it does not express clearly a different idea, is at least of doubtful import. This they did if President pro tempore means as claimed in the resolutions under consideration.

There was no reason arising upon the propriety and elegance of the word "vice" as a prenomen to an office, or the want of such propriety and elegance, which could induce the framers of the Constitution to reject the words "Vice President of the Senate" in this clause, if they had intended really, as is now claimed, to provide such officer. That prenomen is of established use in our language, as in vicegerent, viceroy, vice chamberlain, vice president, and many others. This last, vice president, has been, as we have seen, adopted as appropriate constitutional language.

Nor was there any reason, arising from political motives or other motives, to reject in this particular instance a phraseology used in other parts of the Constitution where the idea of a regular permanent substitute is expressed. The Constitution uses the words "President of the United States" as the designation of an original officer, and the words "Vice President of the United States" as the designation of a regular permanent substitute for the former.

In the clause under consideration we have the words "President of the Senate," designating, naming, an officer having original powers and duties in presiding over the Senate. So that if, in providing a vicarious officer, it had been intended to provide as in case of the "Vice President of the United States" a regular and permanent officer to exercise as often as the occasion should arise the powers of President of the Senate it was most natural and proper to use the words "Vice President of the Senate." In that event the language of the Constitution would have been uniform and consistent—"President of the United States," and for his regular and permanent substitute "Vice President of the United States"; and "President of the Senate," and for his regular and permanent substitute "Vice President of the Senate."

But this natural phraseology is not followed in this clause, but is abandoned. Being abandoned it is impossible not to conclude that the idea represented by it is also abandoned.

The words "President pro tempore" are used, not "Vice President." If these words were of ambiguous meaning, if they equally applied in the correct use of language to a regular and permanent substitute, such as the Vice President of the United States and to a temporary substitute to be provided on each occasion of the necessity for his action, we would be bound to reject the first meaning if for no other reason than that the change in the phraseology above commented on was made.

But President pro tempore is not ambiguous. It does not mean equally both a regular and permanent substitute as Vice President does, and a temporary substitute selected toties quoties, as the necessity may arise. In fact, the phrase had at the time of the adoption of the Constitution a meaning—a well-settled technical meaning in parliamentary law—which is a part of the common law. That meaning was and is a president selected for the occasion, and with power not extending beyond it; a president for the time-being; that is, there being an absence of the president, the substitution was for that time, the time the absence is.

So that when this clause of the Constitution commanded the Senate, "in the absence of the Vice President," to elect a "President pro tempore," it determined and fixed not only the occasion of the election, to wit, the absence of the Vice President, but also fixed the tenure of the elected officer, just as plainly as if the language of the command had been to elect a president who shall act only during such absence. The command is to elect an officer whose very name indicates that he has no power beyond the occasion for which he is elected.

I have said that President pro tempore had at the adoption of our Constitution in 1789 a fixed technical meaning in the common law of England. There are many instances of the use of such terms in the Constitution, and in all these cases their common-law signification must be, and always has been, recognized as their true meaning. Instances of these are jury, grand jury, probable cause, impeachment, oath, affirmation, direct taxes, duties, imposts, excises, felonies, habeas corpus, bill of attainder, capitation tax, quorum, law and equity, twice in jeopardy of life or limb, and others. All these terms are used in the Constitution, and in order to know what they mean we are compelled to refer to their signification as understood and defined at common law. Jury means 12 men empaneled and sworn as such, and it is not in the power of Congress to make a jury composed of less or more than 12 men. Grand jury, the indicting body, secret in its deliberations, is organized as at common law. Impeachment by the House of Representatives, habeas corpus, bill of attainder, and all the others carry no other idea than such as was attached to them at common law.

Of all the technical words used in the Constitution only one has a meaning different from its signification at common law, and that is the word "treason." As to that word the framers of the Constitution were unwilling to adopt the common-law meaning, and so in that case alone, in order to exclude the common-law meaning, the Constitution itself defined the meaning, and this fixes beyond all controversy that as to all other terms used the common-law signification was adopted.

The words "President pro tempore" have, as I have stated, their fixed and determined meaning as a technical term.

That meaning I have above defined. It is my purpose now to show that always in England they had the meaning I have given and no other.

My task at this point has been made easy indeed by the action of the House of Commons from its earliest history down to the adoption of the Constitution, as delineated in a learned and exhaustive report of a committee of that body made in the year 1853.

From this it will be seen that no speaker pro tempore or other substitute for the speaker was allowed from the first institution of that great body till during Cromwell's Protectorate. The universal and unbroken practice of the Commons up to that time was to adjourn during the absence of the speaker. By the constitution of England, though the House of Commons had authority to elect their speaker, yet the person selected must be a persona grata to the King and could not therefore be installed till presented to the King and approved by him. Without such approval he could not be installed. The approval was essential to his being speaker—as essential a part of his title to the office as election by the house.

The speaker's presence was absolutely essential to the organization of the house in order to be competent to any business. So strict was this rule that instances are recorded wherein the house held it could not legally pass an order of adjournment in the absence of the speaker. In the year 1606, the speaker being absent, after prayers were read by the clerk, the journal states:

"They [the members] departed the house. This is an intermission of necessity, no adjournment."

At another time the motion was that the house—

"be discontinued till Friday morning; so they arose and departed, yielding assent by a necessity to the motion."

At another time, in order to release a person from custody who had been arrested by order of the house, it was resolved: "That he be freed for a time by connivance." At another time, "business of great importance being now on foot," such was the entry, it was concluded that the members "might debate the matter among themselves, which they might do without a speaker," and so they debated in a committee of the whole house, but made no order.

A committee was appointed to consider how the speaker's place might be supplied, but the speaker returning in a few days the matter was dropped. It is curious to note that for 250 years the total absence of the speaker amounted only to a few weeks. This was prior to the Protectorate, soon after the middle of the seventeenth century.

During the Protectorate a speaker pro tempore was elected five times.

On January 27, 1656, the speaker being sick, a speaker pro tempore was selected—to use the language of the journal—"to supply the speaker's place during his absence." Thus, at the first time a speaker pro tempore was selected it was expressely stated that he was to occupy the speaker's place during his

absence. In 1658 there was another election of a speaker pro tempore "to supply the speaker's place during his absence, occasioned by his present indisposition, and no longer." I quote the language of the journal. And similar entries were made in all the other cases.

After the restoration of Charles II this practice was discontinued, so that when the speaker was absent no business was done, except on one occasion of a prolonged absence when by leave of the King a new speaker was elected, not a speaker pro tempore. In fact no speaker pro tempore was ever afterwards elected.

Of course, the inconvenience was great, but still the history of the times shows that very few absences of the speaker ever occurred. Thus, Speaker Onslow served 33 years and was absent only four times, and all his absences amounted only to 21 days, and all were occasioned by sickness. All the absences after Speaker Onslow for a period of 29 years do not amount to a dozen days. This brings us to 1789, the date of the adoption of the Constitution. It may be as well to state now that up to 1855 there was no other election of a speaker pro tempore. Notwithstanding the increase in the business, and the increased number of hours of the sitting of the house, averaging from seven and one-half to nine hours a day, the speaker attended regularly, except in a few instances. From 1828 to 1843 there was not a single absence.

In 1853, however, a committee was raised to consider the question of allowing a substitute speaker. From their report I have learned the facts above stated. The recommendation of the committee confirms in every respect what I have stated as to the meaning of a speaker pro tempore. The recommendation was that the chairman of the committee of ways and means should, when informed of the unavoidable absence of the speaker, take the chair for that day only; but if such absence should continue for another day, the chairman of ways and means should take the chair only by express order of the house.

This shows indubitably that by the common law, both as it existed in 1789, when our Constitution was framed, and as it existed in 1853, a speaker pro tempore could exercise his duties only for the time being—the existence of the particular absence of the speaker—that this was implied in the name speaker pro tempore itself.

In 1855 this matter was again considered by a committee of the House of Commons, and their report confirms in the plainest manner the position I have assumed.

They reached the conclusion that a permanent substitute should be provided. To accomplish this they recommended the enactment of a law by Parliament authorizing such designation, and they also recommended a standing order of the house to carry out the law. In this bill and in this order the nomenclature is changed. We see nothing of a temporary speaker, or a speaker pro tempore; but the substitute, according to the right use of language, is nominated a deputy speaker.

Mr. President, I have thus shown beyond successful controversy that the term President pro tempore had at the time of the adoption of the Constitution a fixed and certain meaning in the common law of England, and that this meaning was, an officer selected on a particular occasion of the absence of the original or permanent officer, and for that particular absence only. I have shown, also, that that meaning has never been changed in England to the present day.

It is equally true that this same meaning was, in the United States, given to the term at the adoption of the Constitution and has been continued in practice up to the present day. An effort was made in 1861 to give the term a different meaning—the same now claimed for it by the resolution of the Senator from South Carolina. On that occasion the attempt was resisted by the ablest members of the Senate, and it failed. Both Mr. Bayard and Mr. Trumbull, in opposing the change, stated distinctly that universally up to that date this meaning had been adhered to in practice by the Senate. This was not denied by the Senators favoring the change. This meaning has been adhered to since.

So that we have the concurrent voices of the House of Commons of England, extending over 500 years, and of the American Senate extending through 100 years, as to the meaning of the words "President pro tempore." That meaning being, as I have shown it to be, a President selected in each particular absence of the President, with power extending only through that absence, it is shown beyond controversy that the command of the Constitution to elect, in the absence of the Vice President, a President pro tempore is a command to elect an officer whose term is bounded by that particular absence.

Mr. President, it will not escape the attention of him who investigates the history of the House of Commons on this subject that one of the main reasons for the house adhering with such pretinacity to the idea of having no substitute, temporary or otherwise, for the speaker, was that this officer though elected by the house was also required to be approved by the King. Another reason was that it being important to have the regular speaker always in the chair, the provision for any kind of substitute would encourage his absence.

Similar reasons apply here and to-day. The Vice President, who is made President of the Senate by the Constitution, is appointed not by the Senate but by the people. For important and grave reasons the people have retained to themselves the election of this officer, and for this reason no arrangement should be made which would tend to show that his presence was not material. The scheme of the Constitution is to make the States absolutely equal in representation in the Senate, and this equality is in some degree abridged by the election of any Senator to the high and influential position of President of the Senate for any long and stated period. The equality is best preserved by the continued presence of that officer whom the people at large have selected for that purpose.

Again, the Vice President, when acting as President of the Senate, has a most important function to perform which is lost, not performed at all, when he is absent. This function is to give a casting vote when the Senate is equally divided. In such a case the negative voices or negative States prevail, and to that extent have a superior power. In such an event, to preserve the absolute equality of States and of those representing States, the Constitution provides for a settlement which shall give no advantage to one over the other. The equilibrium of an equal vote is not allowed to be destroyed by the mere form of the proposition, as affirmative or negative, but it is broken only by a person representing all the States and all the people of the United States.

Besides, he who has been selected by the people to perform the important function of presiding over the representatives of equal States should not, without absolute necessity, be set aside or allowed to stand aside for one selected by the body itself. As regard was shown for him who in England was approved only by the sovereign, so regard, even in a greater degree, should be shown to have him preside who was not only approved but selected by the sovereign—the people of the United States.

Mr. TURPIE. Mr. President, when the language of the Constitution of the United States was adopted it was done with reference to long parliamentary experience preceding it, and I believe that it was owing to the inconvenience of the frequent election of a substitute for a presiding officer of this Chamber or any other parliamentary body (and those very inconveniences are noted from the record by the Senator from Mississippi) that the makers of the Constitution gave the power to this body to choose a somewhat permanent substitute for its regular presiding officer. That they contemplated the grant of such power is clear, and the fact of the Senate not having exercised it is another matter.

I think it must be taken as a part of the elementary law of parliamentary existence that a parliamentary body has the right at all times to have presiding over it an officer with the duties of president. In fact, a body can not exist without such an officer. Therefore, when it is said in a parallel passage with respect to the other branch of the National Legislature that "the House of Representatives shall choose their Speaker and other officers," I do not think that that section was intended to operate simply as a grant to the House of Representatives of the power to select their Speaker, because it was a part of the common parliamentary law of the world that such an assembly had the right to select its Speaker. On the contrary, I think such section (and the use of the word "choose" indicates it) was to do away with the English parliamentary practice and to vest in the House of Representatives of the United States the absolute creation of the office of Speaker.

The speaker of the English House of Commons is not chosen by that body. A person may be selected for that position, but the selection is submitted to the Crown and must be approved by the Crown. It was not, then, to vest a power already in a parliamentary body for the selection of a presiding officer, but to take away this ancillary condition, existing when that power was exercised by the British Parliament, that this section was so written:

"The House of Representatives shall choose" absolutely, without condition, subject to no approval, "their Speaker and other officers." There is a parallel section in almost the same words with respect to our substitute for the Vice President or President of the Senate.

Of course, this original fundamental power of a parliamentary body to select its own presiding officer may be supplanted by the law of the land. The law of the land, in this case the Constitution of the United States, prescribes that the Vice President shall be the President of the Senate, and that function of our original parliamentary power is taken away, but we are expressly authorized by the Constitution to choose a substitute for that permanent presiding officer:

"The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President."

This is another instance of absolute, unconditional choice by us. The object of this section was no more than that of the other, to vest in the Senate of the United States the power to select an officer to preside in the absence of the Vice President. We have that under the common law. Every parliamentary body in the world has it under the common law.

It is not provided that the House of Representatives shall select as Speaker one of its Members. Why? Because it was part of the parliamentary law too common, familiar, elementary, and primary to be worth a word or a line in the Constitution. It is not said that the Senate shall choose their other officers and a President pro tempore, such President pro tempore being one of their own Members. Why? Because the persons to whom the Constitution is addressed and for whom it was made, under the common parliamentary rule of the world would make that condition, that the substitute for the Vice President should be a Member of the body.

This section, then, was not written here simply to authorize us to select a person as a substitute when the presiding officer was absent, nor was it written here to authorize us to select a Member of our own body as such temporary or permanent substitute; but it was written here for the purpose of preventing the frequency of the elections of such substitutes, for the prevention of monthly, daily, or weekly elections which might occur in his absence, defining the term of service of the substitute and giving him somewhat of a permanent character.

I take the same phrases that were used by the honorable and learned Senator from the State of Mississippi:

"And also a President pro tempore in the absence of the Vice President."

The Senator thinks the phrase "in the absence of the Vice President" qualifies the word "choose"; that is, that the Constitution makers had thought it of sufficient importance, absolutely a subject of information, that they should insert it in the Constitution here that we should choose a substitute for that officer in the absence of the Vice President. I do not think that is of the least importance at all, any more than the other things that I have alluded to. The phrase does not qualify the word "choose"; it qualifies the phrase "President pro tempore," and indicates the term of the office of President pro tempore; that is, the time of his service and the term of his service, to wit, "in the absence of the Vice President."

"Absence," it may be noted, is capitalized; it begins with a capital A in the manuscript and in all the received editions of the text. It was a very common style then to commence substantives with a capital letter, but all the substantives in the Constitution are not so begun. This substantive is a word commencing with a capital letter, and such a substantive is especially understood to be used in the largest and most inclusive sense of interpretation. The word "absence" here is greater than any one absence and it is larger than all absences; it includes every condition and every occasion of absence. The word doubtless originated from the early military Roman law. When a centurion called his legions upon the banks of the Rhine centuries ago the man in file next to the one missing answered with this word "absent." That was the first answer. It made no difference whether the missing one was killed, taken by the enemy, absent by disease, missing, or whatever the occasion or cause of absence, the answer was "absent," and the word has crept into civil life as well as the custom of calling the roll from the usage of the old military camps.

The word "absence" includes the absence of the Vice President, his nonattendance from any cause and upon any occasion, and indicates that the substitute so chosen shall pro tempore, for that time and for any and all absences be the presiding officer of this body. Of course, he holds subject to the pleasure of the Senate. The Senate may choose a new substitute every day if it sees fit, but it may choose a substitute also for all absences. The time of service is during any and all absences. The term of the service is during the pleasure of the Senate, always bearing in mind also his own term as a Senator.

Mr. REAGAN. Mr. President, the language under which a President pro tempore of the Senate is appointed is that—

"The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States."

While there is great force in the argument made by the Senator from Mississippi [Mr. George] to show by analogy that there must on each occasion of an absence of the Vice President be a President pro tempore elected, the language seems to me to be such as to justify the practice of the Senate of electing a President pro tempore to hold that position during the pleasure of the Senate.

The Senate shall elect a President pro tempore in the absence of the Vice President. Strictly, perhaps, the argument suggested by the Senator from Mississippi may be correct, but we see that the power is to select a President pro tempore. The duty is for him to preside in the absence of the President of the Senate.

One of the things to be accomplished, if it can be done under the terms of the Constitution, is to avoid repeated elections of a President pro tempore, for if on each absence of the President of the Senate a new election is to be held, it will be seen that considerable inconvenience would arise with considerable loss of time. So it seems to me that the practice of the Senate of electing a President pro tempore to serve during its pleasure is perhaps allowable under the language of the Constitution, and it certainly is conducive to the convenience of the Senate.

My object, however, in rising was to say that while the resolutions presented by the Senator from South Carolina are substantially in conformity with the usage of the Senate, they seem to me to require something further to be said. The precedents show that the President pro tempore at one session of Congress takes his seat as President of another session after a recess, and a great many of the precedents show that the President pro tempore at the expiration of a Congress takes his seat at the commencement of a new Congress. It is convenient for the Senate to allow him to do so for the purpose of organization; but it seems to me as a rule to be unjust and improper for the reason I shall state. I know it is done upon the supposition that the Senate is a continuing body. So it is a continuing body with installments added every two years, if I may use such an expression. At the end of each Congress it is presumed that one-third of the Senate are new to their position. It ought not to be that that one-third of the Senate shall have no choice in the selection of a President pro tempore, and that would be allowable under the resolutions presented by the Senator from South Carolina.

It may be said, however, in view of that, that he holds his office during the pleasure of the Senate. But suppose the Senate at this session elects its President pro tempore and before the next meeting of Congress the political character of the Senate has changed and another political party is in power, should it be assumed that the President of the Senate now elected should preside over a body of a different political complexion? Such would be the logic of the assumption that the President pro tempore should in all cases hold over; that is, that a President of the Senate elected by one Congress should hold over and perform his duties through another Congress.

This, it seems to me, shows a double reason against that view. The first reason is that the whole Senate ought to have a voice in the selection of their temporary presiding officer. The next is that the political principles of the party which is in the control of the Senate ought to be represented by the President pro tempore as that party is usually represented by the President of the Senate.

I did not propose, Mr. President, to make an extended argument. I only desired to call attention to the fact and to express the hope that if we are to affirm the resolutions of the Senator from South Carolina it will be with the qualification that the President pro tempore only takes his seat on the occurrence of a new Congress for convenience and for the temporary purpose of the organization of the Senate, and until a new President pro tempore can be elected by that Senate.

Mr. EVARTS. Mr. President, this subject has been an interesting one in the debates of the Senate and of the Government, and now we are brought to the point of some conclusive determination of it, as it seems to me. A very careful examination which I have given to the clauses of the Constitution and a full attention to the habit rather than any precedents by deliberate determination

have brought me to feel that there was really no doubt not only that we were competent to make a choice of a President to act whenever an occasion should arise within the clause of the Constitution, but that it would be very inconvenient that any opposite course should be tolerated.

In the first place, we all agree that by the first clause of the first article the two bodies of Congress are created legislative bodies, and that carries with it the whole power of the organization of each of these bodies by itself, unless there appears in the arrangements of the Government otherwise provided some limitation or restriction of that freedom which belongs to a legislative body. Section 1 of Article I reads as follows:

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Now, we shall all agree that if there was nothing in the Constitution providing affirmatively or negatively in regard to the organization of either of these legislative bodies, it would be wholly competent and indeed necessary that this full function of providing its officers should be worked out. For the Senate there comes to be in the frame of the Government a special provision for its presiding officer, and that is found in the fourth clause of the third section of this same article of the Constitution:

"The Vice President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided."

The Vice President must be in life or else this clause takes no effect. It can not be doubted that this provision of a President for this body in an elective Vice President, this fourth clause fails to take effect if there should be no Vice President. No one would contend that that dissolved the Senate or prevented it from exercising its full legislative functions and full powers of organization, for the plenary power of the Senate if its own nature and constitution has been encroached upon only by the provision that there being a Vice President he shall preside. I therefore must differ from the Senator from Mississippi [Mr. George] in his lucid and, I think, conclusive statement of the general argument, in thinking that the fifth clause, which I shall now read, was needed there or in any proper sense applicable to the nonexistence of a Vice President.

What then—after the situation somewhat of contradiction between the plenary power of the Senate to organize by its own officers and this provision of the Vice President—what, then, was the provision for a restoration to the plenary power of the Senate over its own organization in a situation which should by a Vice President being in life but yet absent from the body or removed by a further and higher function from an ability to discharge the ordinary presidency of this body? That is the clause upon which the principal argument turns, and to which I do now invite attention.

"The Senate shall choose their other officers, and also a President pro tempore—"

Or "for the time"—

"in the absence of the Vice President, or when he shall exercise the office of President of the United States."

Here there is carefully no suggestion for any situation except where there is a Vice President in life, and yet he is absent from the Senate or is a certain contingency clothed with the discharge of the great duties of President of the United States.

It will not do to suppose that this careful, deliberate provision for the Senate's restoration, so far as was possible, to its control of an officer to preside should be limited to the mere right of calling a person to the chair because casually, or for the moment, or the day, or part of a day, the Vice President desired to leave the chair. It was therefore a matter of that magnitude and of that dignity and of that permanence in a provision for the casual absences of the Vice President or of his elevation to become acting President, that the Senate should have an officer; not that one of its members might be called to the chair this morning and another the next, but it is put in association with all the other officers of the Senate "choose their other officers" than that of President already provided for, and for that office with all the powers that it would possess in respect of the tempus, the time, the situation in which the Vice President would not be able to preside.

An attempt has been made in the previous argument to draw some distinction between the need of a new choice up on the absence and the necessary conclusion that the Senate was to choose from day to day. I am unable to draw any such distinction as that. The question is whether an officer of this Senate can be chosen who shall preside for such occasions as arise permissible in the Con-

stitution, that is not for reasons if the Vice President is here, but for reasons if he is away or occupied in a greater office; and it seems to me that it is absurd for us to feel that on every casual knowledge communicated to us in the morning that some providential cause has unexpectedly interrupted the coming of the Vice President we must choose a temporary presiding officer. We are entitled to be provided with an officer who is to have his function come into exercise whenever there is occasion for such official action. We all feel the inconvenience that there should be an election of a presiding officer in the morning with only the casual attendance of this or that part of Senators, when there has been no advisement that there was an election to take place, and an adjournment for want of a quorum for that purpose would be an indecorum and a slight to the Senate which would be felt as undignified.

Every reason, therefore, seems to show that the Constitution contemplated the usefulness and the necessity of there being provision by the election—that is, the choice—of a presiding officer always ready to take the place that should be left to be occupied by the absence or elevation of the Vice President. We all understand when there is a permanent elevation of the Vice President that takes him from the Senate, but here was a necessary provision contemplated as in the routine for the elevation of the Vice President though treated only as one of those catastrophes in the Government that should occur from the death of the President.

We therefore were legislated for by this firm provision of the Constitution as one of the routine incidents of the existence of this body that would have been a master wholly of the question from day to day or permanently the presiding officer but for this constitutional presiding officer, the Vice President of the United States.

Now, the precedents that are so talked of are rather in the nature of an acquiescence than of an approval. Debates have been held from time to time, more or less pertinent to the present question, and without conclusive determination. In 1861 Senator Collamer, an able lawyer, an eminent judge, an experienced and wise Senator, introduced the disposition of this matter in the same sense as the resolutions offered by the Senator from South Carolina [Mr. Butler], and in a very complete argument presented the considerations. Senator Bayard—the elder Bayard—made the opposing argument with a very competent discussion, but I think if you compare the progress of that debate, which came to no resolution, you will see that Senator Bayard was disposed to concede that as a matter of logic, if it were new and open, the view of the Senator from Vermont must be taken as the better, but placed his adherence to the habit that had prevailed with respect to the long-continued acquiescence in that view.

Mr. President, there is another view of this matter that has not been introduced into the debates previously I think. We all know that the few constitutions of the old States that were established as a consequence of and immediately following the Revolution, furnished precedents and phrases and practical incidents to attract the attention of the framers of the Constitution of the United States and to be accepted and followed in many points. Most of those governments I believe had a governor and a lieutenant governor. They also had the legislative arrangement of a senate and of a house of assembly, and there was always, I think, a provision—I will not say always, but so far as I know for the most part a firm provision—that the lieutenant governor should preside in the senate; and all of them, I think, both those of modern construction and these early examples, understood and appreciated precisely the same situation of the senate's needing a president of its own, so that when the occasion called away the lieutenant governor there would be no head without such provision; and, so far as I know or believe, this question (which is the same question that we are now talking about) was settled by phrases of the constitutions that I refer to. So far as I am familiar with them, the same language is used in the successive constitutions of the State of New York; and if the question be of mere phrase and syntax the conclusion must be adverse to the views that the Senator from South Carolina has presented in his resolutions and which I support. Nevertheless, they all ended in a continuous, unbroken habit of choosing a president pro tempore of the senate, not waiting for the absence of the lieutenant governor, but choosing him in the presence of that officer in his place, by the execution of the constitutional power reposed in the body of the senate to choose its officer that was to be in function subordinate to the paramount and previous right of the lieutenant governor to take and keep the chair, but nevertheless an officer in existence ready to take and occupy the

seat and the function that could not be interrupted and ought not to be casually tossed about by unprepared elections.

I will not attract the attention of the Senate to the particular phrases of the constitutions of New York of 1777, of 1821, of 1846, but if Senators will look at them they will see that no distinction can be drawn either in the reason, the logic, the phrase, the conveniences that attend this construction; and if that has been, as I am told it is, in the new constitutions of the States that have come in and in the old States that have lieutenant governors—for some of them did not have lieutenant governors, and therefore the president of the senate was a creation wholly of the action of that body—they will find an irresistible argument that as these constitutions furnish the precedent, the diction, the syntax, the collocation, there has been no divergence in the intent of the phrase here either from a habit in existence as in the State of New York for 12 years under the constitution of 1777 before this Constitution of ours was adopted.

I drew the other day a resolution, which, I think, presents the proposition and covers the point—and I have no choice as to the form or manner of expression—to this effect:

"*Resolved*, That it is competent for the Senate to elect a President pro tempore who shall hold the office during the pleasure of the Senate and until another is elected and shall execute the duties thereof when the Vice President is absent."

I did not understand the point, perhaps I did not accurately hear the point stated by the Senator from Texas [Mr. Regan] as to the inconvenience of continuing a President pro tempore when there had been a change made in the majority between parties in the Senate. But nobody has pretended that any officers of the Senate held otherwise than at the pleasure of the Senate, and if the majority do not wish to change a presiding officer although he is of the opposite politics, it is of no incongruity. Nulla injuria fit voluntas.

Mr. REAGAN. The Senator will allow me to say that I recognize the truth of the position taken by him that the Senate may at any time change its presiding officer. I had mentioned that if the President pro tempore was to continue in office from one Congress to another it might make him the President pro tempore of a minority party, and I used that figure to illustrate the injustice of the President pro tempore holding over from one session to another in the same sense that I used the suggestion that such a practice would deny the right to the incoming one-third of the new Senators to participate in the selection of a President pro tempore.

Mr. EVARTS. That is like any other organization; this is a plenary power, and I do not know that any inconvenience can be expected except on that very point of swearing in Senators, which we all know is a point where there may be a trivial time in which there may be a majority one way that will be reversed when the Senators are all sworn in. But I do not think that any Senate has ever acted upon any such casual and fugitive situation as that.

Now, as we all agree that the place is at the pleasure of the Senate every moment to choose whom it may please, I should be very glad if the Senate would now act upon the adoption of our conclusion that the competency of the Senate is in the shape in which it is presented in the resolution which I have read merely as a suggestion, and which is presented in the resolutions of the Senator from South Carolina.

Mr. BUTLER. Mr. President, I have no idea now of discussing the resolutions which I offered, and whilst I concur entirely in the view presented by the Senator from New York [Mr. Evarts], there is a difference of opinion in the Senate upon the subject, and it is a question which I think ought to be settled; and as we are not likely to remain in session more than a week or 10 days, and no great inconvenience can result from this matter remaining as it is, unless some other Senator desires to address the Senate or desires to have a vote now, I shall move that the resolutions which I offered, and if the Senator from New York chooses, the resolution which he has just read, be referred to the Committee on Privileges and Elections.

Mr. HOAR. Mr. President, I should like before the resolutions pass from the Senate to say a word.

This question first presented itself to me a few days ago. I knew the unbroken usage of the Senate, which was, as I understood it, to elect a President pro tempore whenever the Vice President at any time was absent, whether absent because he was discharging the duties of President or for any reason, and also when the Vice President was dead. Under that election the President pro tempore continued in office until the return of the Vice President to the chair,

whether it was the next day or the next week or not until the end of the presidential term, as in the case of the death of the Vice President or in case of the discharge of the duties of President by the Vice President. I had supposed that that was the meaning of the Constitution, in accordance with Mr. Jefferson's statement, which has been quoted, as I presume, in this debate, though I have not heard all of it, and in accordance with the statement made in Mr. Morton's report.

But I have become satisfied on hearing the argument made by the Senator from New York [Mr. Evarts] and other arguments on that side and further considering the matter, that as an original question the better argument is in favor of the power to appoint the officer whose function continues, terminable at the pleasure of the Senate—I suppose nobody questions that—who may take the seat in case of repeated absences of the Vice President without a new election. I think, as the existing practice has been the other way, no Senator who has been elected President pro tempore heretofore would be justified in taking the office in the renewed absence of the Vice President, he now being in his seat, without a new election or without a vote of the Senate declaring its will and purpose to that effect.

So then, in my mind, the matter stands with an unbroken usage one way and this strength of constitutional argument the other. Under these circumstances I shall not feel disposed myself to interpose any objection or obstacle to the affirmance of the will of the Senate either now or hereafter on deliberation, as the Senate may think best.

Mr. DOLPH. Mr. President, I can not vote for the resolutions. There has been a great deal of learning displayed in regard to construing the provision of the Constitution which says:

"The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President, or when he shall exercise the office of President of the United States."

No one disputes that the Vice President of the United States is the President of the Senate, and that when he is present he is entitled to preside, and the Senate has no power to say that any member of the Senate or any other officer shall preside. But inasmuch as he might be absent from the Senate or might be called on to discharge the duties of President of the United States, the framers of the Constitution undertook to provide what should be done when either one of these contingencies arose. They said that—

"The Senate shall choose their other officers, and also a President pro tempore—"

For the time being. When?

"in the absence of the Vice President—"

That is one case. The other is—

"or when he shall exercise the office of President of the United States."

It seems to be plain enough to the ordinary mind, unless we begin to refine about it. The term was well understood—"pro tempore," for the time being. Some of the framers of the Constitution were in the Senate of 1789; and since then for a hundred years "for the time being" has been construed to mean during the absence of the Vice President or President of the Senate, or during the time for which he performs the duties of President of the United States.

For my part I can not appreciate the reasoning by which this clause of the Constitution would be made to mean that the Senate may choose an officer who may perform the duties of President of the Senate during successive absences of the Vice President. I do not know what we are to do with the words "for the time being" if we do that.

The record shows that for a hundred years the practice has been to choose a President pro tempore of the Senate whenever the Vice President was absent, and that when he returned the office of President pro tempore was vacated, and when he was again absent another President pro tempore was elected. It was not always the same man. During some sessions of Congress I find that different Senators, in some cases four or five different Senators, have been elected at different times to serve as President pro tempore of the Senate at the same session during different absences of the Vice President.

So I think we have in the first place a term used here upon which there ought to be no misunderstanding as to its meaning. In the second place, it was construed by the framers of the Constitution, some of whom were members of the first Senate. In the third place, it has been construed practically for a hundred years by the Senate. I do not think the present generation are wiser than their fathers.

Mr. DAWES. Mr. President, as has been said by the Senator from Oregon [Mr. Dolph], the Constitution has had a construction by those called upon to construe it in this respect for a hundred years. The construction put upon this phrase of the Constitution commenced with the Constitution itself, and was largely the construction of the framers of the Constitution. The phraseology of the Constitution requires manipulation in order to rescue it from that construction. No canon of construction which does not conflict with the phraseology of the instrument is so strong or so constantly adhered to in judicial proceedings and in constitutional interpretation as contemporaneous construction. To that is added the opinion of Mr. Jefferson, recognized up to this hour as the standard of constitutional interpretation in reference to parliamentary law. The Senate itself not only has conformed to that construction, has not only conformed to the idea, to the law, if I may use that phrase, laid down by Mr. Jefferson in his Manual, but they once submitted the question to their own committee chosen to consider such questions, the result of which was, so far as I know, a unanimous report, at any rate a report embodying the contemporaneous construction, the authorities, the precedents, and that report was submitted and went into the documentary archives of the Government without any further action.

I fail to see any occasion at this time to depart after a hundred years from this method. I fail to see any occasion for us to bring up out of the dead past any such question as this, and I am myself personally at a loss to find any argument that would justify a departure from the ways of our fathers in this respect. It is to me an absurdity to choose a President pro tempore of the Senate before we need him and when we do not need him.

If there is any parliamentary law in conflict with this construction or any common-law power of parliamentary bodies in this respect, when the Constitution took up this subject and provided how it should have the Senate which it created presided over it exhausted the subject. Its framers did not add to any parliamentary system a new system and leave it optional with the body whether it should take this course or that course. They prescribed first that the Vice President of the United States should be the presiding officer of the Senate, and then if perchance he should be absent the body should not fail of power to act, as the Parliament of England did, on occasions when he should be absent and the constitutional presiding officer was not here; it could still go on, and how? By supplying the vacancy when the vacancy existed. That is all; and until some one shall suggest any need, any cause for a departure from this long line of precedents of a hundred years, I shall be unwilling myself to vote for any such resolution.

Mr. PLATT. Mr. President, I do not rise to make any extended remarks. I understood the Senator from Massachusetts to say that this question had been submitted to the Senate and practically decided by the Senate either by vote or by tacit acquiescence.

Mr. DAWES. This is just exactly what I said, and it was not that: I said the Senate on one occasion submitted it to its proper committee for decision, and that committee made a report, unanimous so far as I was informed, and that report had gone into the archives of the Government without action. The Senate acquiesced from that moment in the conclusions of their own committee. If the Senate differed from its committee, it did not think it was wise to put that difference upon record. I have a right to say that the Senate thought best not to depart from its own precedent after the report of that committee and to proceed as before.

Mr. PLATT. Do I understand the Senator to refer to what is known as the Morton report?

Mr. DAWES. Yes, sir.

Mr. PLATT. I have looked at that casually, and my impression about it is that this question which is now under consideration was not decided by the resolutions submitted by that committee, and which were, I suppose, adopted by the Senate. It seems to me, upon a reading of that report and those resolutions, that the precise question now before the Senate was left open. There is a

sentence in the report which would seem to be based upon the same reasoning which the Senator from Massachusetts now adopts, but the resolutions reported by that committee appear to me to leave the matter open.

The point which was submitted to the committee was not the point which is now in discussion before the Senate, but was this, as I understand it—perhaps I may be mistaken about it—but my recollection is that the point of that submission to the committee and of the report of the committee was, whether, if a presiding officer was elected at the close of a session he held over and could resume his duties or continue his duties at the commencement of the next session. I do not understand that anything else was submitted to that committee, nor that the resolutions reported by them go any further than that. That is my impression about it, and I only rose because if my impression was erroneous I desired to have it corrected.

Mr. DAWES. I understood that case to be this: A President pro tempore of the Senate had been elected in the absence of the Vice President at the close of the previous session. In the meantime the Vice President deceased, so that he never reappeared in the Senate; and when the Senate came back there were those who not only thought that it was necessary to elect a President pro tempore every time the exigency occurred, but there were some who thought that in that case they ought to elect him over again. It was carrying the idea of repeated elections farther than the precedents.

Everybody held up to that time that a President pro tempore held over until the Vice President reappeared. Nobody thought that when the Vice President reappeared he could stand aside and still hold his office. But there were those who thought that when the Vice President ceased to exist and could not reappear, then the Senate must elect a President pro tempore over again. But there was not a suggestion in the resolutions or in the debate or in the report that when the Vice President reappeared actually this President pro tempore, not being needed, continued in office. It was stronger than a report upon the simple question which is now raised.

Mr. BUTLER. Mr. President, the questions embraced in these resolutions were not considered at all by the committee to which the Senator from Massachusetts refers. That report was simply as to whether or not the President pro tempore, having been elected at the first session of a Congress, could resume the chair at the meeting of Congress at the beginning of the second session, and the precedents were overwhelming; in fact, I think, with four exceptions, all decided in that way, that the President pro tempore of the Senate might at the beginning of the second session resume the chair under the former election. That was the question raised under that resolution. But these resolutions go beyond that and undertake to settle the question whether or not the President pro tempore of the Senate must be reelected after a temporary absence of the Vice President. That is all.

As I said, I do not propose to go into the discussion of that question, for I think it has been very elaborately argued by the Senator from Mississippi [Mr. George] on one side, and by the Senator from New York [Mr. Evarts] on the other; but inasmuch as it is somewhat new it occurred to me that the best disposition to make of it was to refer it to the Committee on Privileges and Elections, who can have ample opportunity to investigate the subject in the light of all the precedents and in the light of the language of the Constitution itself.

I myself have no doubt about it. I think it would be almost an absurdity to say that if the Vice President should be temporarily absent on account of sickness or other cause for one, two, three, four, or five days, and should return, thereupon the Senate must proceed to the election of a President pro tempore on his going away after this return. The orderly conduct of business, the natural construction of the language of the Constitution itself would seem to me to contradict that idea. So I am quite prepared now to vote upon the question; but still there is difference of opinion, and I should prefer myself to have the consideration of one of the standing committees of the Senate, so that it may be settled for all time and settled considerately.

The VICE PRESIDENT. The question is on the motion of the Senator from South Carolina that the resolution be referred to the Committee on Privileges and Elections.

Mr. PLATT. Mr. President, before the resolutions pass away from the Senate, I wish to refer to the Morton report once more. I do not know but that it has been referred to in this debate, as I have not been in the Senate all the while,

but if it has not been, I would desire to state what the resolution was which was then submitted to the Committee on Privileges and Elections, and what their conclusions were, so that they may both go into the Record. The resolution submitted to them was this:

"Whereas since the last session of the Senate the Vice President of the United States has deceased: Therefore,

"*Resolved*, That on the 7th day of January next, at 1 o'clock afternoon, the Senate will proceed to the election of a President pro tempore."

There was an exhaustive report and a reference to precedents affecting that proposition, and the conclusion of the committee was in these words:

"In conclusion the opinion of the committee may be thus summed up—

"1. The tenure of a President pro tempore does not expire at the meeting of Congress after the first recess, the Vice President not having appeared to take the chair.

"2. That the death of the Vice President does not have the effect to vacate the office of President pro tempore.

"3. That the office of President pro tempore is held at the pleasure of the Senate."

Mr. BUTLER. It is not at all unlikely that that report, which contains quite a number of precedents, is getting scarce, and if the Senator from Connecticut will not object I shall ask that it be printed in the Record in order that it may be preserved and that the committee may have access to it.

Mr. PLATT. I have no objection. I think it may be useful.

The VICE PRESIDENT. If there be no objection the report referred to will be printed in the Record. The Chair hears no objection.

(The report referred to will be found on page 245.)

Tuesday, April 2, 1889 (Journal, p. 581).

The chair having been vacated by the Vice President (the Secretary took the chair),

Mr. Edmunds submitted the following resolution:

Resolved, That in the absence of the Vice President, John J. Ingalls, a Senator from the State of Kansas, be, and he hereby is, chosen President pro tempore.

The Senate proceeded by unanimous consent to consider the resolution; and

The question on agreeing thereto having been put by the Secretary,

It was determined in the affirmative.

Whereupon the oath of office having been administered to Mr. Ingalls by the Secretary, he took the chair,

Subsequently,

On motion by Mr. Hoar, and by unanimous consent,

The oath of office was administered to Mr. Ingalls by Mr. John Sherman, a Senator from the State of Ohio.

FIFTY-FIRST CONGRESS, FIRST SESSION.

Thursday, December 5, 1889 (Journal, p. 26).

ELECTION OF PRESIDENT PRO TEMPORE.

The Vice President gave notice of his intended absence from the Senate for several days, and, having called Mr. Allison to the chair, withdrew from the chamber.

Whereupon

Mr. Hoar submitted the following resolution, which was considered by unanimous consent and agreed to:

"*Resolved*, That Hon. John J. Ingalls of Kansas be elected President pro tempore of the Senate during the absence of the Vice President."

Mr. Ingalls thereupon took the chair.

[Congressional Record, pp. 114, 115.]

The VICE PRESIDENT. The Chair begs to state that the present occupant of the Chair will have occasion to be absent two or three days during the ensuing week.

Mr. HOAR. I offer the following resolution, for which I ask present consideration:

"*Resolved*, That Hon. John J. Ingalls of Kansas be elected President pro tempore of the Senate during the absence of the Vice President."

The VICE PRESIDENT. If there be no objection to the present consideration of the resolution, the question is on agreeing to the same.

Mr. COCKRELL. I should like to ask the Senator from Massachusetts if we can pass that resolution while the Vice President and President of the Senate is in the chair?

Mr. HARRIS. We can not hear the Senator from Missouri.

Mr. COCKRELL. I was asking whether we can pass that resolution when the President of the Senate is present.

Mr. HOAR. I think we can. I thought we could not at one time, but I have carefully investigated the question since, and I think that has been the custom.

Mr. HARRIS. I suggest to the Senator from Massachusetts, to avoid the possibility of any such question, that the Vice President call some Senator to the chair, and we can then act upon the resolution.

Mr. ALLISON was called to the chair by the Vice President.

The PRESIDING OFFICER (Mr. ALLISON in the chair). The resolution submitted by the Senator from Massachusetts will be read.

The Chief Clerk read as follows:

"*Resolved*, That Hon. John J. Ingalls of Kansas be elected President pro tempore of the Senate during the absence of the Vice President."

The PRESIDING OFFICER. If there be no objection to the present consideration of the resolution, the question is on its adoption.

The resolution was agreed to unanimously, and Mr. Ingalls, escorted by Mr HARRIS, advanced to the desk and took the chair as President pro tempore.

[The Congressional Record of December 5, 1889, page 113, says the resolutions introduced by Mr. Butler at the special session in March last were referred to the Committee on Privileges and Elections.]

Monday, February 10, 1890 (Journal, p. 109).

REPORTS OF COMMITTEES.

Mr. EVARTS, from the Committee on Privileges and Elections, to whom was referred the following resolution, submitted by him March 27, 1889, reported it without amendment:

Resolved, That it is competent for the Senate to elect a President pro tempore, who shall hold the office during the pleasure of the Senate, and until another is elected, and shall execute the duties thereof when the Vice President is absent.

Wednesday, February 26, 1890 (Journal, p. 142).

PRESIDENT PRO TEMPORE.

On motion by Mr. EVARTS,

The Senate proceeded to consider the resolution reported by him on the 10th instant relative to the tenure of office of the President pro tempore; and

After debate,

Ordered, That the further consideration of the resolution be postponed to to-morrow. (See Congressional Record, pp. 1717, 1718.)

PRESIDENT PRO TEMPORE OF THE SENATE.

Mr. EVARTS. Mr. President, early in this session several resolutions were introduced relative to a subject which had been discussed at the last session of

Congress in the Senate as to the tenure of office of President pro tempore spoken of in the Constitution, and on this single point, whether it was competent for the Senate to elect a president pro tempore at the pleasure of the Senate, who so long as that pleasure should last, should hold the place and so occupy the chair whenever the absence of the Vice President should make it proper that a President pro tempore should take that seat. The Committee on Privileges and Elections, considering these resolutions, authorized and directed a report of a resolution which should declare the sense of the Senate on this subject, and I ask that that resolution now may be read.

The VICE PRESIDENT. The resolution called up by the Senator from New York will be read.

The Chief Clerk read the resolution reported by the Committee on Privileges and Elections, as follows:

"*Resolved*, That it is competent for the Senate to elect a President pro tempore, who shall hold the office during the pleasure of the Senate and until another is elected, and shall execute the duties thereof when the Vice President is absent."

Mr. EVARTS. The subject has been discussed in reference to other points bearing upon the tenure of a President pro tempore, and also upon the point now submitted. In 1861 there was a very intelligent and comprehensive debate in which Mr. Collamer, of Vermont, and Mr. Bayard, the elder Bayard, of Delaware, conducted the discussion on the one side and the other. The result of that debate, I think, was—and an examination of the record of that debate will show whether I am right or not—a very general conclusion that as a new question there could not be any doubt that the convenience and the dignity of the Senate would be consulted by having this permanent position established of the right to take the chair on casual vacancies so long as the Senate itself should desire that the power should repose in the elected President pro tempore.

But there was a feeling, and it so appeared in the debate, that the general sentiment, if not the general action, of the Senate had been the other way; in other words, that there was some imperative injunction in the Constitution which should confine the Senate in its privilege of electing a President pro tempore to the actual absence of the Vice President, and not beyond the then current absence which might become permanent in some way. Lately it was discussed in this chamber at the last Congress, and it has been very generally considered, I think, in the Committee on Privileges and Elections of that Congress and of this.

The provisions of the Constitution on this subject are very simple. They are found in Article I, section 3, paragraphs 4 and 5. Paragraph 4, for the purpose of my present argument, simply declares that the Vice President shall be the President of the Senate. Paragraph 5 directs that the Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President or when he should discharge the office of President under the Constitution.

There was a report in 1876, which I hold in my hand, which disposes of somewhat important suggestions that are acquiesced in fully. There was one question, whether a President pro tempore chosen at one session of the Senate should vacate that place, that post, that office, at the opening of the next session or after the first recess of the Senate. This committee were entirely of opinion, and there is now I suppose no difference in the Senate on that point, that that did not terminate the office of President pro tempore. Another question was whether it would be terminated if the Vice President should be permanently withdrawn by death or resignation—whether that would terminate the office of President pro tempore. There it was held that that occurrence should not and would not terminate the office. It appears now that there is left for consideration only this: Whether, as a matter of constitutional obligation, it is essential that the Senate should confine the existence and authority of a President pro tempore to the immediate occasion of the particular absence of the Vice President on which he is elected.

This resolution, as the Senate will perceive, holds that in the true constitutional view the place of President pro tempore is, properly speaking, an office with the assignation of the absence of the Vice President or his elevation to the Presidency as an indication of the space and opportunity for which an election should be made, and that the qualification in the fifth clause of the third section of the first article does not carry at all any impression to the contrary.

I do not know, Mr. President, that I ought at this stage of the matter, until it shall appear that now there is repugnance to the view which I present and which the committee have presented, to go further into the discussion of the question. Under the law of 1792 the President pro tempore of the Senate held, in a certain contingency, a right to succeed to the Presidency; that is to say, on the withdrawal of the President and Vice President from the chief place in the Government, the President pro tempore of the Senate would take the place in succession. While that act of 1792 was in force there were opportunities and occasions for debate and adherence to one view or the other as involving a somewhat important consideration.

But as the law now stands, by which the President pro tempore of the Senate never comes into this position, the question as to his tenure is limited entirely to the consideration which should be determined, first, by the constitutional obligation, if it is so affirmed that it can not be otherwise treated, and, secondly, if it is open to consideration, whether the dignity and propriety of affairs should not lead to the election of a permanent President pro tempore—permanent in the sense of holding at the pleasure of the Senate and not requiring an instant and frequent election or reelection upon exigencies of the nature that would call into action such a power.

I believe the best source of interpretation, if we should go outside of the language of the Constitution, which I am satisfied bears the construction I put upon it, would be in the State constitutions and the construction and habits of the States under similar provisions. In our own State, sir, it has always been settled that under similar phrases of our constitution where we have a provision for the lieutenant governor being president of the senate, it has always been the course to elect a permanent president pro tempore or president of the senate. I believe in other States, with whove governments a number of other Senators are more familiar than I am, the course of construction has been the same.

No Senator can see more clearly than I do the very great inconvenience of being dependent, entirely without a presiding officer, when a merely casual, unexpected, and unannounced, and yet necessary absence of the Vice President may require that there should be some one to take the chair.

Indeed, if the Senate should be close, as in its history it has been, it is very much better that the question should be settled, only to be reversed by the Senate at its pleasure, and not be left open as a question of contention whenever the chance may offer for a very narrow contention of a divided Senate, which might arise.

I hope, therefore, that the Senate will now dispose of this question, and I think it will be in favor of the resolution as reported from the committee.

Mr. HOAR. Mr. President, perhaps, as a member of the committee to whom this resolution was referred, I may be permitted to make one or two observations.

I was originally of the opinion that the proper interpretation of the Constitution was the other way and I was led to that opinion by the fact that the unbroken precedent had been the other way; but on careful examination of the question I am now satisfied that the better constitutional argument upon the question as an original one is in favor of the conclusion which has been stated by the Senator from New York [Mr. Evarts], for the reasons which he has stated and for other reasons which might be added if it were required.

Of course nobody doubts that the Senate may make this election every time the Vice President leaves the chair if it pleases; and if the possibility of succession to the Presidency remained in the President pro tempore of the Senate in case of a vacancy in the office of President and Vice President, I should not be disposed to consent to depart from a practice which has the support of unbroken usage; and in that case it might be well argued as a matter of expediency that the most recent expression of the will of the Senate in regard to the officer who should so succeed ought to be the one which had designated and called him to the chair and to the possibility of succession. But it is now a matter merely for the convenience of the Senate, and there can be no question that the most convenient rule is that which, as it seems to me, has the better original argument on its side; therefore I am prepared to support the resolution which the Senator from New York has reported.

Mr. GEORGE. Mr. President, I was not aware that this matter would come up this morning. At the last session I believe a similar resolution was presented and I gave the matter some consideration, and whilst I differ with some

diffidence from the conclusions of a committee so able as the Committee on Privileges and Elections, yet my examination thoroughly convinced me that the practice, the uniform, unbroken practice of the Senate of the United States for 100 years, and the uniform and unbroken practice of the House of Commons in England for 500 years did settle the meaning of the Constitution adverse to the position assumed by the committee.

I can not now, Mr. President, on this short notice, recall all the arguments which led me to that conclusion. I would therefore, if it would suit the convenience of the Senate—and it is an important matter of declaration and not of action—be obliged if the resolution could pass over, so that I might refresh my mind as to the arguments and the historical facts, because they are important, which enter into the solution of the question. I ask, then, as the opinion that I entertain on this question is concurred in by some of the soundest lawyers in the Senate and as it has received the uniform sanction of this body for 100 years—I ask that the resolution may lie over for a day at least, in order that there may be opportunity given for the examination of the question.

Certainly, what is proposed is a very grave innovation upon the practice of the Senate and a very grave departure from the uniform construction placed upon the Constitution by this body during the whole of its lifetime. I therefore ask the Senator from New York if it would be convenient to him, as no action is proposed by the Senate, but a mere declaration of opinion, that the further consideration of this resolution be postponed until Monday or Tuesday next, or, if that is too long, until to-morrow.

Mr. EVARTS. Mr. President, if this resolution is adopted I should expect to follow it either to-day or to-morrow with a motion to proceed to elect a President pro tempore with the continuance of service that is contemplated by this resolution, and I have heard that there might be some occasion whereby we should need to proceed to an election, and I should like to have the election which is to come on held under that resolution if possible. Therefore, if the Senator from Mississippi will allow me to suggest to him that to-morrow it be taken up I shall be very much obliged to him.

Mr. GEORGE. That will do, Mr. President. I shall be perfectly content to answer on the part of the uniform practice of the Senate for 100 years on to-morrow morning.

The VICE PRESIDENT. The resolution will lie over until to-morrow morning.

Friday, February 28, 1890 (Journal, p. 146).

ELECTION OF PRESIDENT PRO TEMPORE.

The Vice President having vacated the chair, the Presiding Officer (Mr. Hale in the chair) laid before the Senate the following letter:

VICE PRESIDENT'S CHAMBER,
Washington, February 28, 1890.

DEAR SIR: Please state to the Senate that I expect to leave Washington to-morrow for an absence of about two weeks, and shall therefore be unable to be present at the next session of the Senate.

Very respectfully, yours, LEVI P. MORTON.

Hon. ANSON G. MCCOOK,
Secretary of the Senate.

The letter was read.

Whereupon Mr. Sherman submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That in the absence of the Vice President, John J. Ingalls, a Senator from the State of Kansas, be, and he hereby is, chosen President pro tempore of the Senate.

The oath prescribed by law was thereupon administered to Mr. Ingalls by the Secretary, and he took the chair.

Wednesday, March 12, 1890 (Journal, p. 165).

TENURE OF OFFICE OF PRESIDENT PRO TEMPORE.

On motion by Mr. Evarts,

The Senate resumed the consideration of the resolution relative to the tenure of office of the President pro tempore; and having been amended, on the motion of Mr. Turpie, to read as follows:

Resolved, That it is competent for the Senate to elect a President pro tempore who shall hold the office during the pleasure of the Senate and until another is elected, and shall execute the duties thereof during all future absences of the Vice President until the Senate otherwise order;

After debate, the resolution as amended was agreed to. (See Congressional Record, pp. 2144–2148, 2150–2153.)

PRESIDENT PRO TEMPORE OF THE SENATE.

Mr. EVARTS. Mr. President, I call up in the Senate the privileged question of the resolution reported by the Committee on Privileges and Elections, as to the office of the President pro tempore and the power of the Senate concerning the same.

The PRESIDENT pro tempore. The Senator from New York moves that the Senate do now proceed to the consideration of the order of business which will be reported by the Chief Clerk.

The Chief Clerk read the following resolution, reported by Mr. Evarts from the Committee on Privileges and Elections February 10, 1890:

"*Resolved*, That it is competent for the Senate to elect a President pro tempore, who shall hold the office during the pleasure of the Senate and until another is elected, and shall execute the duties thereof when the Vice President is absent."

The PRESIDENT pro tempore. The question is on the motion of the Senator from New York to proceed to the consideration of this resolution.

The motion was agreed to.

Mr. EVARTS. Mr. President, when I called up this matter in the Senate when it was last considered I announced that when it was brought up again I should ask that the Senate should proceed to a vote upon it. The Senator from Mississippi [Mr George], who is in his seat, has now, I believe, the floor upon that question.

Mr. GEORGE. Mr. President, I wish to acknowledge the courtesy extended to me by the Senator from New York [Mr. Evarts] in having this matter postponed until it should suit my convenience to address the Senate. I feel that in attempting to present the arguments in opposition to this resolution I undertake a hopeless task. The resolution has received the sanction of one of the ablest committees of the Senate, and so far as I know has received the unanimous assent of that committee; yet I feel that my duty as a Senator, my obligation to support the Constitution, requires of me to say something against this innovation in the practice of the Senate.

I am sure that I stand on safe ground. I have on the side which I shall advocate this morning the uniform practice of the Senate commencing with the very first session of Congress under the Constitution and continued from that day without a single break up to the present time. Certainly, a construction of the Constitution which received the sanction of the first Senate, in which there were many Members who assisted in framing the Constitution, continued without dissent from that time to the present, a construction of the Constitution thus commenced and thus sanctioned ought not to be departed from for light and trivial causes. The very first act ever performed by the American Senate was the election of a President pro tempore. In the order made by the Senate for that election the term of that officer was fixed in plain and unequivocal language. It was ordered that he be elected "for the sole purpose" of opening the electoral vote. From that time until the year 1861, so far as my researches go, there was unanimous consent on the part of the distinguished men, our predecessors in these chairs, as to the true construction of the clause

of the Constitution now involved. At all times and in every conceivable way in which the question could be raised, it was uniformly decided until 1861, without dissent on the part of anyone, that the President pro tempore of the Senate held his office, as the words themselves mean, during that particular absence of the Vice President for which he was elected.

In 1861 an effort was made to change this uniform practice. That effort was alluded to by the Senator from New York the other day in the speech he made in behalf of this resolution. The Senator from New York misinterpreted the result of that debate, as I understood him to say that the conclusion at the termination of the debate was in favor of that construction of the Constitution which is favored by his resolution.

Mr. EVARTS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Mississippi yield?

Mr. GEORGE. Certainly.

Mr. EVARTS. The Senator is wrong in the recital of my statement if he supposes that I meant to say that the Senate had then come to a conclusion and a resolution upon the question. My interpretation of the course of the debate, mentioning the principal speakers, on one side Mr. Collamer of Vermont, and on the other Mr. Bayard, the elder, of Delaware, was that the general result of the argument was that but for the habit which had been followed in the Senate it would be regarded as a new question in the way that I now state. That is all that I said.

Mr. GEORGE. Mr. President, I do not understand the position of the Senator from New York as explained now by him different from what I understood it to be before. That debate and the result of it do not show that if the question had then been res nova the decision of the Senate would have been different from what it was. There were two principal speakers—Mr. Collamer, who urged that the clause of the Constitution requiring the President pro tempore to be elected in the absence of the Vice President merely indicated the occasion of the election, and Mr. Bayard, who insisted that it indicated something further; that it had something to do with the tenure. They were the only two speakers, except Mr. Simmons of Rhode Island, who concurred with Mr. Collamer, and Mr. Trumbull, of Illinois, who dissented. On objection made by Mr. Trumbull the resolution was laid aside and never taken up again.

So the result of that effort to change the uniform practice of the Senate from 1789 to 1861 was a failure, and thereafter, down to the present time, the practice of the Senate has conformed to the original interpretation placed upon the Constitution as I have stated it to be.

It is hardly worth while, though it would fix in the minds of Senators the practice, for me to go into the various affirmative actions of the Senate in which the construction placed upon the Constitution by the Senator from New York in the resolution which he brings from the committee was explicitly condemned. I have some memoranda here, however, to which I will refer in order to fix in the minds of Senators that this was not a mere silent acquiescence in a wrong interpretation of the Constitution, but was a reiterated construction placed upon it by the actual proceedings of the Senate.

From March 4, 1789, to March 4, 1793, being the first term of Washington's administration, three different persons were elected President pro tempore, and in every case the election took place, as it is conceded by the Senator from New York it must take place, during the absence of the Vice President, and in every single case the tenure of the office was held to be terminated by the subsequent appearance of the Vice President. For instance, the first President pro tempore who was ever elected was elected on the 6th day of April, 1789, John Adams not having been installed as Vice President. He held his office until the 26th of that month, when John Adams appeared, and it was held that the office of President pro tempore ceased.

From March 4, 1793, to March 4, 1797, there were five different Members—not merely five elections; there were more—but five different Members of the Senate were elected to this office.

From 1797 to 1801, during the administration of John Adams, nine different Senators were elected President pro tempore of the Senate. There were more elections than nine, but nine different Senators were upon nine different absences of the Vice President elected, and in every one of them the term of their office was held to have been determined by the return of the Vice President.

From 1801 to 1805, during Mr. Jefferson's first term, five different Senators were elected; from 1805 to 1809 there were three; from 1809 to 1813 there were four; and in every single one of these elections it was held by the Senate that

there was a vacancy in the office of President pro tempore by reason of the return of the Vice President to the chair.

That covers all of the early period of our constitutional history. I have some more data furnished me by the report of Mr. Morton, from the Committee on Privileges and Elections, made on January 6, 1876. From that report I learn that on the 19th day of March, 1818, Vice President Tompkins retired from the chair and the Senate chose Mr. Gaillard President pro tempore. Mr. Gaillard was President pro tempore on the 19th of March. Mr. Tompkins reappeared on the 31st day of March, and it was held by the Senate that that vacated Mr. Gaillard's office. Mr. Gaillard, under that election, held the office exactly 12 days, and when Mr. Tompkins retired or became absent there was a new election.

Mr. Gaillard was President pro tempore on the 28th of December, 1821, when the Vice President resumed the chair.

On the 1st day of February, 1822, the Vice President informed the Senate by letter that the condition of his health rendered it necessary that he should return to his family, whereupon the Senate again elected John Gaillard, who had been displaced only a few weeks before by the appearance of the Vice President. Mr. Gaillard was President pro tempore on the 21st of January, 1824, when the Vice President resumed the chair, and on the 21st of May he retired, and the Senate again elected John Gaillard President pro tempore.

We come down to a little later period. At the first session of the Thirty-fifth Congress, December 7, 1857, the Vice President being absent, Mr. Rusk of Texas, who had been chosen President pro tempore at the last session, having died in the recess, the Senate elected Benjamin Fitzpatrick of Alabama President pro tempore. This appointment terminated on the appearance of the Vice President during the session; but on the vacation of the chair by the Vice President Mr. Fitzpatrick was again elected President pro tempore.

At a special session of the Senate, which met June 15, 1858, the Vice President, Mr. Breckinridge, being absent, Mr. Fitzpatrick, President pro tempore, resumed the chair.

We come now to the year 1869:

"The Vice President, Mr. Colfax, was present at the assembling of the Senate at each of its regular sessions during the Forty-first and Forty-second Congresses; but uniformly retired from the chair just before the close of each session to enable the Senate to choose a President pro tempore, and this office the Senate as uniformly conferred upon Hon. Henry B. Anthony, who was President pro tempore during the recesses that intervened in those two Congresses, as well as repeatedly during each session, upon the temporary absence of the Vice President.

"XLIX. At the special or called session of the Senate which assembled March 4, 1873, the Vice President, Hon. Henry Wilson, being absent, the Senate chose Hon. Matt. H. Carpenter, a Senator from the State of Wisconsin, President pro tempore. This appointment ceased upon the appearance of the Vice President at the first session of the Forty-third Congress and his resuming the chair; but being forced by indisposition to retire from its duties, the Senate again chose Mr. Carpenter its President pro tempore, who is at present in the exercise of that office."

So, at the expense of frequent elections, at the expense of changing the occupant of the chair as frequently as 10 or 12 days apart, with one uniform concensus of opinion, with a uniformity of practice which is without a single break for 100 years, the judgment of the Senate has been that the President pro tempore elected in the absence of the Vice President vacates his office upon the return of that officer.

I read further from this same report made by very able men and from the same committee which has reported the resolution under consideration. Mr. Morton's committee says:

"The office of President pro tempore of the Senate must expire whenever the absence of the Vice President is at an end and he appears in the Senate to preside."

The report quotes from Mr. Jefferson, certainly an authority than whom none can be higher. He presided over the deliberations of this body for four years, and in his Manual he says:

"In the Senate the President pro tempore is proposed and chosen by ballot. His office is understood to be determined on the Vice President's appearing and taking the chair."

And then the report of Mr. Morton's committee says:

"The unbroken and uniform practice of the Senate, from its first session down to the present time, sustains the position that the office of President pro tempore of the Senate is determined on the Vice President's appearing and taking the chair."

In fact, so far as I have been able to learn (the Senator from New York or the Senator from Massachusetts in their researches may have found out other men), no man except Mr. Collamer and Mr. Simmons down to within the last Congress ever asserted the contrary of the view that the office of President pro tempore expires with the return of the Vice President from that particular absence.

That is the practice. That has been the uniform practice. That has been the uniform construction of the Constitution, commencing with its birth and running through a period of 100 years. The Committee on Privileges and Elections ask us to reverse that. They make no report in which an argument is contained upon which we are to rely in ascertaining the grounds upon which they propose to change this uniform practice. The Senator from New York undertook to give some grounds for it. I think I have shown that he was mistaken in the principal ground which he gave, and that is that the result of the debate in 1861 was unfavorable to the old and settled practice of the Senate.

The Senator from Massachusetts informs the Senate that his opinion at one time had been adverse to the resolution reported from his committee, but he stated that he thought the better argument was in favor of the rule now attempted to be enforced. However, he did not give us the argument. No man, so far as I know, has attempted to give any argument in favor of this reversal of practice of 100 years except Mr. Collamer of Vermont. I propose to answer that argument, as I have no other to answer. His position was that the Constitution merely fixed the occasion of the election of a President pro tempore. I will read the Constitution:

"The Senate shall chose their other officers, and also a President pro tempore in the absence of the Vice President or when he shall exercise the office of President of the United States."

The view of Mr. Collamer was that that merely fixed the occasion in which the power vested by this clause of the Constitution in the Senate was to be exercised. It is true it does fix the occasion, but it does more. We are construing the Constitution according to the view presented in the pending resolution of the committee, which I will now read to the Senate:

"*Resolved*, That it is competent for the Senate to elect a President pro tempore, who shall hold the office during the pleasure of the Senate and until another is elected, and shall execute the duties thereof when the Vice President is absent."

According to the view of the committee, the officer elected is a continuing officer who holds his office, not only during that particular business of the Vice President, but during the pleasure of the Senate, and not only during the pleasure of the Senate, but in addition thereto until a successor is elected. Now, I put this question to the honorable Senator from New York and to the honorable Senator from Massachusetts: If the meaning of the Constitution is that we shall elect a regular substitute for the President of the Senate to come in and take the chair as often as that chair shall be vacated by the President of the Senate, why is it that the Constitution restricts the power of the Senate to make that election to the casus in which there will be an absence of the President of the Senate?

The scheme of the Constitution is that the people of the United States shall elect the Presiding Officer of this body, and for very obvious reasons. The power, the influence which a permanent occupant of the chair has, does to some extent destroy the equality of the States in their representation in the Senate. so that when the framers of the Constitution determined that there should be absolute equality between the States in this body they determined also that that equality should not be disturbed by the mere accident of the Presiding Officer belonging to one State rather than to another. The scheme of the Constitution is that he shall preside.

It is not within the mere election of the Vice President whether he shall preside or not. He has no right to vacate that chair except upon a case of necessity. I call the attention of Senators to a speech made by Elbridge Gerry in 1814, when

he was Vice President (and when he declined to vacate the chair some time before the adjournment of the Senate so that a President pro tempore could be elected), in which he declared that it was his duty to preside, quoting the language of the Constitution, "The Vice President shall be President of the Senate." That great man, Vice President of the United States, a member of the convention which framed the Constitution, declared, in view of the importance of that office, that it was his duty to be present and to preside, and he refused to vacate the chair so that a President pro tempore might be elected except a few moments before the final adjournment of this body. That is a very valuable speech. It declared that the office of Vice President, or permanent President of the Senate, was not an office which the occupant could take up or lay down at his pleasure; that he had an important function to perform: First, to preserve the equality of the States in their representation in this body, and, second, his presence prevents the negative States, upon any particular proposition, prevailing over an equal number of affirmative States.

According to parliamentary law, where a body is equally divided (and let it be remembered that the Senate, when full, is always composed of even numbers and therefore may be equally divided on almost any question) and when this body composed of even numbers divided equally votes upon a proposition, the negative votes are stronger than the affirmative votes of equal number, 41 Senators voting "nay" outweigh 41 Senators voting "yea." The scheme of the Constitution was that the 41 negative votes, or negative States, should not be borne down by an equal number of affirmative votes or affirmative States; and the Constitution therefore provided for an arbiter, and that arbiter was the Vice President of the United States sitting as President of the Senate.

Mr. President, when a man is elected to the very high office of Vice President he is not elected to a mere sham, to a mere show, to a mere honorary office, or to a mere contingency, to live until some accident may happen to the President of the United States which may call his vicarious powers into active operation.

Again, if it was the scheme of the Constitution that we should have a permanent, regular deputy, prepared at any time and at all times to take the place of the Chair when the Vice President might be absent, I ask the Senators to tell me why we can not create that officer until the Vice President is absent. If the scheme of the Constitution was that we should have this deputy President (because that is his real name, as I shall show before I get through) selected, set apart to assume the duties of the office of Vice President whenever it may seem pleasing to the Vice President to be absent, why was it that the Constitution would not allow us to appoint him when we were regularly organized?

Mr. HOAR. It does.

Mr. GEORGE. Why is it, Mr. President, that when the Constitution refuses us the power when we are fully organized, ready to do business, to appoint another presiding officer of this body; when that occasion happens we can appoint one for all time to come?

Mr. HOAR. Will the Senator pardon me for saying that I understand all the advocates of this resolution believe the Constitution confers the power to make the choice at any time, whether the Vice President is present or absent.

Mr. GEORGE. The Senator believes that?

Mr. HOAR. I understand that is the universal opinion of all the persons who advocate the pending resolution.

Mr. GEORGE. I am very glad to have that admission from the Senator. It will save me some trouble. Now, let us see whether there is any foundation for that. We are still living under the Constitution, I believe, though some things occur sometimes that make me doubt whether the Constitution of the United States is in force.

"The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President."

Mr. Collamer, in 1861, the first man who ever questioned the tenure of the office of the President pro tempore, admitted that the plain language of the Constitution gave the power to be exercised only in the absence of the Vice President. Why is it that during all these long years, just before the adjournment of the Senate, at a session of Congress, under the old law, which put the President pro tempore in the line of succession for the Presidency, the Vice President retired, went out, became absent, so that the Senate might exercise this power? Were all these men, after this hundred years, mistaken? What new light has

broken in upon us now that, in opposition not only to the uniform practice for 100 years, but in opposition to the plain meaning of the words used, we are to usurp the power of electing a President pro tempore with the Vice President in the chair?

Why was it that the Committee on Privileges and Elections did not move the election of a President pro tempore before Vice President Morton vacated the chair? If the committee believe, as stated by the Senator from Massachusetts, that the power exists in this body to elect a President pro tempore when the Vice President is present in the chair, why did they wait for the Senate to become disorganized only a few days ago before they called upon the Senate to elect a President pro tempore? I hardly know how to describe it, but can not argue against a sham. The Senator from Massachusetts informed me of the opinion of the learned committee of which he is chairman, but he did not condescend to give a reason why the words "elect a President pro tempore in the absence of the Vice President" meant to elect a President pro tempore whenever the Senate got ready to do it, whenever it suited their convenience to do it.

Mr. President, of course I can not fight a proposition of that sort unless it is buttressed up by some sort of reasoning. I assume that no valid reason can be given not only for striking out words in the Constitution which are plainly written in it, but also for the insertion of words directly contrary in meaning. If the Senator from New York who has honored me so far by his presence during my remarks will get up and state that that is the basis of the right they claim in this resolution I think I have discussed the matter long enough, and I will take my seat. The Senator does not respond. The Senator does not dare say that the Senate has a right to strike from the Constitution of the United States the words "in the absence of the Vice President" and insert in it "whenever it shall please the Senate." He will not do that.

By what kind of reasoning, able, ingenious lawyers may reach the conclusion stated by the Senator from Massachusetts to be the conclusion of the whole committee I confess I am unable to anticipate. I was going upon the argument made by the Senator from Vermont, Mr. Collamer, many years ago, who insisted that this language did fix in the Constitution the occasion and only the occasion in which the power to elect a President pro tempore existed. I was going to say that I thought I had driven the advocates of this singular proposition into a corner. I will not say that. I think they have run into a corner without being driven.

There are one or two other reflections which I desire to submit to the Senate upon the question now before us. The first thing I will do will be to put in juxtaposition the Constitution and the resolution and see if they can stand together.

"The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President or when he shall exercise the office of President of the United States."

That is the Constitution. Now I will read the pending resolution:

"*Resolved*, That it is competent for the Senate to elect a President pro tempore, who shall hold the office during the pleasure of the Senate and until another is elected, and shall execute the duties thereof when the Vice President is absent."

I do not think it requires a very astute mind to see that these two propositions can not stand together. But I will hasten on.

I have the authority of the uniform practice of the Senate. I have the authority of all the great men who have ever preceded us in these seats for 100 years, with two single exceptions—just two—Mr. Collamer and Mr. Simmons. Now, I propose to show that ex vi termini the words "President pro tempore" mean a President for the particular absence of the Vice President. "Pro tempore" are two Latin words which have a signification. There are other words of that sort in the Constitution; and whenever you read the Constitution and come across one of those words, if you do not in language you must in idea substitute the English meaning of the words for the words themselves.

What are you going to do about "a quorum"? What is a quorum? What is the meaning of the word "quorum"? It is a Latin word meaning "of which." That is the literal meaning of the word, but it acquired a meaning at common law long ago of this sort: "That number of the body competent to do business." What will you do with "habeas corpus," two Latin words used in the Constitution? Whenever you read the Constitution, to understand it you

must get in your mind the English words which these two Latin words represent—a writ to bring in the body of the prisoner before the court to examine into the cause of committal. And so with all the others. Those words had their signification at the time the Constitution was adopted, a well-known signification at common law, to which we must refer in ascertaining the meaning of every technical word used in the Constitution. "Bill of attainder." How will you ascertain what that means except by going to the common law? "Jury." How will you ascertain what that means except by going to the common law and finding that it means a body of 12 men above all exception, sworn to try a cause? "Grand jury." All these words are used in the Constitution. How are you going to know what they mean except by going to the common law? When we read the Constitution we read it as a parrot repeats unmeaning words, unless when we come across these technical words we bear in our minds the meaning in the English language which they represent.

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PRESIDENT PRO TEMPORE OF THE SENATE.

Mr. GEORGE. I believe, Mr. President, I have unanimous consent to proceed.

The PRESIDENT pro tempore. The Senator from Mississippi is recognized upon the resolution reported by the Committee on Privileges and Elections.

Mr. GEORGE. Mr. President, when I was interrupted I was talking about the technical words used in the Constitution of the United States, and saying that we had to resort to the English common law in order to find out what they meant. I desire to call the especial attention of the Senator from New York to the proposition which I make, that in every single instance in which a technical legal term is used in the Constitution of the United States, except one, the courts have put upon these technical terms the exact meaning which they had at common law. There is one exception, and only one, and that is the word "treason." There the Constitution defines the meaning of the term itself, the exception proving the rule. In every instance in which a technical term is used in the Constitution it is used in the sense it had at the common law at the time of the adoption of the Constitution, except the word "treason," and there our forefathers being unwilling to allow the doctrine of constructive treason to prevail in this country, defined in the Constitution itself what treason was. On that basis I will go on to show what "President pro tempore" and "Speaker pro tempore" meant at the time of the adoption of the Constitution of the United States, by the common law of England.

There is some similarity between the speakership of the House of Commons in England and the Presidency of the Senate. In England the speaker of the House of Commons is elected by the house, but he has to be approved by the sovereign. The President of the Senate is appointed by the sovereign in the United States, the people. We have nothing to do with his election. In England, on account of the fact that the election of the speaker had to be approved by the sovereign, it was held up to the time of the Protectorate of Cromwell, a little after the middle of the seventeenth century, that the House of Commons had no power to elect a speaker pro tempore. When he was absent they could do nothing. I will read some instances:

"In the year 1606, the speaker being absent, after prayers were read by the clerk, the journal states:

"'They [the members] departed the house. This is an intermission of necessity, no adjournment.'"

The speaker being absent.

"At another time the motion was that the house 'be discontinued till Friday morning; so they arose and departed, yielding assent by a necessity to the motion.'"

So by the common law in England, after whose institutions ours were modeled, when the presiding officer had to be merely approved by the sovereign it was held that the house could not proceed in his absence and that they could not elect a temporary speaker, and it would be the fact to-day, if the Constitution had not provided otherwise by giving us the power to elect a President pro tempore, that in the absence of the Vice President we could not proceed. But the framers of the Constitution provided for that. The first time a speaker pro tempore was ever elected was during the Protectorate of Cromwell.

"On January 27, 1656, the speaker being sick, a speaker pro tempore was selected"—

How was his place defined? I read from the language of the journal—

"to supply the speaker's place during his absence." Thus, at the first time a speaker pro tempore was selected, it was expressly stated that he was to occupy the speaker's place during his absence. In 1658 there was another election of a speaker pro tempore "to supply the speaker's place during his absence, occasioned by his present indisposition, and no longer."

I quote the language of the journal, and similar entries were made in all the other cases, in every single one. So at the common law it was defined on every single occasion in which a speaker pro tempore was elected that he was elected for that particular absence of the speaker. That being the meaning of "pro tempore" as fixed in the common law, there being no doubt or dispute as to that, that being its meaning in 1789, when this Constitution was framed, it must have that meaning now, unless there be something in the context of the Constitution which gives it a different meaning.

"Pro tempore" is defined by the lexicographers to mean "for the time being." Then, adopting the rule which I have shown, we must adopt in every single case of the use of Latin words in the Constitution, in reading them we must apply in our minds the English meaning. Then the Constitution would read thus: "And shall elect a President for the time being in the absence of the Vice President." Is there any way to escape that conclusion?

Mr. MITCHELL. Is there any limit in the Constitution to that absence?

Mr. GEORGE. I could not catch what the Senator from Oregon said. I wish the Senator would approach a little nearer if he desires me to hear him.

Mr. MITCHELL. Is there anything in the Constitution defining the length of that absence or limiting it in any way?

Mr. GEORGE. Except the language which I have read there is none.

Mr. MITCHELL. May not that absence be one hour or one day or one week or a month and still be within the provision of the Constitution?

Mr. GEORGE. Oh, yes; and I think (and that has been the practice of the Senate) when it is for a year or more, as in the case of the death of the Vice President, the election holds because he is absent. If it is for a day, the President pro tempore is elected for that time; if it is for a week, he is elected for that time; but he is not elected for the absence, whatever it may be.

Mr. President, that being the meaning of the phrase, both in the literary sense "for the time being" and also in the legal sense, then the Constitution must be read: "And shall elect a President for the time being in the absence of the Vice President." If that be so, that closes the argument.

I was not compelled to make this argument to sustain a construction of the Constitution 100 years old. I might have rested upon showing that practice and waited for the gentlemen who contend that that practice is wrong to assail it; but, Mr. President, I know that this resolution is to pass, and I want to inform my Democratic brethren on this side of the Chamber that I have an intimation—I do not know whether it is so or not, and if I am wrong the Senator from New York will correct me—that this great constitutional question, which has been settled by the practice of 100 years, has recently undergone revision in the high court of a Republican caucus. The meaning placed upon the Constitution by Jefferson and Madison and Clay and Calhoun and Webster and by all the great men who have preceded us for 100 years, sanctioned by that long line of precedents, sanctioned by the precedents in the House of Commons in England for 500 years, is to be set aside because a Republican caucus of this body does not like it.

Now, Mr. President, I have great respect for caucuses, and especially for Republican caucuses. I reckon I have more respect for them than I have for Democratic caucuses for this reason: That I never happened to be in a Republican caucus and I happen to have been in several Democratic caucuses, and therefore I know more about Democratic caucuses than I do about Republican caucuses, and I do not think familiarity with these meetings is likely to increase one's respect for them. I have a high regard for them upon another ground, as party machinery. In a Democratic caucus, when anything is debated and decided upon, everybody considers that he has a right to go out and vote as he pleases. I understand that the decision of a Republican caucus is like the decree of an ecumenical council (I believe that is the name) in the Catholic Church. The decree is infallible, and everybody is bound to obey or be anathematized. So, of course, this resolution will pass. Having received the high sanction of the Republican caucus, of course it must go through.

I do not see upon that side of the Chamber just now a very distinguished and able Senator, especially able as a lawyer, and I have his authority for saying that he agrees to the old rule—the old construction—and is opposed to this new-fangled construction put upon the Constitution by the high court of the Republican caucus. He is not here to speak for himself. I suppose, without knowing (this is all guesswork, and I want it understood that this part of my speech is pure guesswork) that, whilst this high council of the Republican Party is not sufficient to convince the judgment of this distinguished Senator, the chairman of the Judiciary Committee, it is at least sufficient to keep him out of this fight. So, then, unaided by his genius and his learning, I have been compelled to present the side of the Constitution of our fathers. I mean what I say. I have been compelled to present the side of the Constitution of our fathers and plead for its observance. I know that my words fall on leaden ears.

What is the Constitution, as expounded for 100 years, when it stands in the way of the convenience or the will of a Republican caucus? Why point, as I have done this morning, to a long line of unbroken precedents, beginning on the first day that this body ever met and continuing down to the present time? Why point to that and to the plain meaning of the Constitution, recognized by all up to this hour, when it suits the convenience of the Republican caucus to annul the Constitution? That is all there is in it. The Constitution says that in the absence of the Vice President you shall elect a President pro tempore. The Republican caucus, if the Senator from Massachusetts is regarded as an interpreter of Republican opinion, says you may elect this President pro tempore whether the Vice President is absent or not. The Constitution says, so interpreted for 100 years, that when you elect, in the absence of the Vice President, a President pro tempore his office ceases upon the return of the Vice President. The Republican caucus—this infallible council of the Republican Party—says: "No, we will elect one when the President of the Senate is in his seat, and he shall hold his place until the pleasure of the Senate is manifested to the contrary and until a successor is elected."

Sir, did it ever occur to our learned friends of the Republican caucus in construing away the Constitution of our fathers, recognized as such for 100 years by every great man and every little man but two who ever sat in this Chamber until the last session of Congress, that they are to set aside this Constitution and put their will in the place of it? "Oh, it is a matter of convenience." I understand it is urged that it is inconvenient every time the Vice President vacates the chair to go through an election. Are we to be told that the Constitution of our fathers, as expounded and acted upon for a century, is to be thrown aside because it is inconvenient for us? I must say we are degenerate sons of these illustrious men if we do it whenever it suits our convenience to set it aside. "We can not afford," is the argument, "to observe the Constitution; we can not afford to preserve the sanctity of our oaths to support the Constitution, because it is inconvenient to do so." Is that the argument that is to prevail in the American Senate? Is that the argument by which that sacred instrument, once so regarded, is to be set aside and trampled under foot? I know that this thing is to be done. It is only a slight invasion, it may be true, of the Constitution. It is only a setting aside of the plain words of the Constitution, so understood for a century, in order that we may be relieved from a little inconvenience. That is all. What new light has poured in upon the minds of Republican Senators? What spirit from this or another world gave to this conclave an insight into the meaning of the Constitution that was denied to all other men for 100 years?

Mr. President, in my weak and humble way I have discharged my duty. I have thought that at least the plain words of the Constitution upon mere little matters of form would be observed in the American Congress. I have long since despaired that its spirit and substance, when they stood in the way of the will of a majority, would be any protection.

The PRESIDING OFFICER (Mr. Berry in the chair). The Senate resumes the consideration of the unfinished business.

Mr. EVARTS. I hope the unfinished business may be set aside and that we may proceed to dispose of this question of privilege, and the vote taken after the Senators have spoken, if they desire to speak.

Mr. BLAIR. Can the Senator from New York indicate about what time he will be able to complete the consideration of this question?

Mr. EVARTS. I hope the vote may be taken very speedily. I shall, in reply, occupy a very few moments of the attention of the Senate.

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PRESIDENT PRO TEMPORE OF THE SENATE.

The Senate resumed the consideration of the following resolution, reported by Mr. Evarts, from the Committee on Privileges and Elections, February 10, 1890:

"*Resolved*, That it is competent for the Senate to elect a President pro tempore, who shall hold the office during the pleasure of the Senate and until another is elected, and shall execute the duties thereof when the Vice President is absent."

Mr. TURPIE. I now submit my amendment.

The PRESIDING OFFICER (Mr. Berry in the chair). The amendment of the Senator from Indiana will be read.

The CHIEF CLERK. It is proposed to strike out at the close of the resolution the words "when the Vice President is absent" and to insert "during the future absences of the Vice President, until otherwise ordered"; so as to make the resolution read:

"*Resolved*, That it is competent for the Senate to elect a President pro tempore, who shall hold the office during the pleasure of the Senate and until another is elected, and shall execute the duties thereof during the future absences of the Vice President, until otherwise ordered."

Mr. EVARTS. The Senator from Indiana [Mr. Turpie], who is a member of the Committee on Privileges and Elections, has proposed this amendment, and, so far as I may speak for the committee and for the supporters of this resolution, there is no objection made to the amendment.

Mr. TURPIE. Mr. President, I have offered the amendment in the terms which I have submitted because I think they are more explicit, and that they are an improvement upon the resolution as it was reported, and put beyond question what the construction should be.

I do not deny what the Senator from Mississippi [Mr. George] has said about the former action of the body, but I do not believe the question involved in the practice has ever been settled, and I think the unbroken practice or custom which he speaks of is owing to the fact that the question has not been discussed, and there has been no determinate or affirmative decision on the construction of the national Constitution herein.

It has always been a mooted question, and the practice and the custom have been mooted and disputed also. I heard here 26 years ago a brief restatement of the discussion between Senator Bayard, of that era, and Senator Collamer. I heard a colloquy in which Senator Bayard, who took the same ground as the Senator from Mississippi now does, conceded that, laying aside what had been the practice of the Senate, Mr. Collamer had the correct construction. Indeed, the Senate determined nothing then. They left the dispute undetermined. I refer to the debate of 1861 only to show that the question was then mooted; and in 1854 there was a debate, and as far as I know the question has always been mooted, at least in modern times, and in the memory of any living man has never been regarded as settled.

Mr. GEORGE. Will the Senator allow me to interrupt him?

Mr. TURPIE. Yes, sir.

Mr. GEORGE. I have looked up the debate of 1854 and of 1856, and the question involved there is not the one here. In the one the question was whether you could get along when the President pro tempore was not present at the meeting of the Senate. The debate was very short, but I am sure the Senator is mistaken in supposing that this question now involved, whether the tenure of the President pro tempore ceases when the absence of the Vice President ceases, was that involved on that occasion.

Mr. TURPIE. I only spoke of the debate of 1854 and an earlier debate on this question upon the reference to them in the debate of 1861, between Senators Bayard and Collamer, and there the earlier debate was recognized as having a bearing upon the construction of this clause. I speak of the discussion which lasted for half a century, which has shown that the question itself was mooted and is yet open. I cite in the first place the passage of the Constitution in reference to the House of Representatives:

"The House of Representatives shall choose their Speaker and other officers."

There is an entirely parallel passage in the Constitution respecting the other branch. The power contained there is not a common-law power. It was the

common law that the House of Commons could not choose its Speaker except sub conditione, and the Upper House could not choose its presiding officer at all, but both these powers were granted in the Constitution of the United States, and the power is absolute in its character, not only as to the Speaker, but as to the other officers. "The House of Representatives shall choose their Speaker and other officers." The passage of the Constitution with reference to our own branch is as follows:

"The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President."

The provisions are the same except as to the order of "other officers." "The House of Representatives shall choose their Speaker and other officers;" the Senate section is "The Senate shall choose their other officers, and also a President pro tempore."

Neither section alludes in any way to the time when the election is to take place. The time when the election is to take place is fixed by the rules of both bodies. It is not fixed with reference to the President pro tempore or with reference to the Speaker any more than it is with reference to the Sergeant-at-Arms of the Senate or the Doorkeeper of the House, or the Secretary of the Senate or the Clerk of the House, "the other officers" of either body.

The only object of both these sections is to confer upon the two Houses the power to effect a complete organization at the time they may desire to do so, and under the rules which they may have made for that purpose and to change the personnel of such organizations whenever they may wish to change the same. Those, then, who adopt our construction are not at all affected by what the Senator from Mississippi has said about the phrases "in the absence of the Vice President" and "when he shall discharge the duties of the office of President of the United States;" for, if these two phrases relate to the time when the Senate shall choose a President pro tempore they relate just as plainly to the time when "the other officers" shall be chosen, and such a construction compels the inference that the other officers, and also the President pro tempore of the Senate, could only be chosen in the absence of the Vice President or when he is serving as President.

Such a proposition can not for a moment be entertained. It is very clear that the two latter clauses in relation to the absence of the Vice President or his presidential service do not relate to the time of the election, but to the occasion and time of the service to be rendered by the President pro tempore.

The first phrase is "in the absence of the Vice President." Now, supposing the Vice President is absent and a Senator is chosen here to preside in his absence under their construction, and during that absence the President dies and the Vice President is fulfilling the duties of the President, is another election for President pro tempore necessary? Is it not plain that both the phrases refer, not to the time of election, but to the occasion and the time of service of the officer so chosen.

I am of the opinion that if the House and the Senate have synonymous powers and equal powers as to the choice of their own officers, we can elect a President pro tempore of the Senate when we elect a Secretary or whenever we choose to do so, whenever it becomes necessary, and that phrase "in the absence of the Vice President or when he shall exercise the office of President of the United States" does not determine the time when we shall choose him, but it does determine the times when that officer shall serve.

Again, the Senator from Mississippi would have us make an actual, literal translation of the words "pro tempore." Let us have it as actual and as literal as you please, and it means "for the time." But what would it mean in this connection? For the time "embraced or included" in the absence of the Vice President or when he shall exercise the office of President of the United States? "Pro tempore" alludes to the term of service of the President pro tempore. It does not allude to the time in which he is chosen or the time of his election, and the clauses which follow it form the contemporaneous and indeed the textual construction of what is meant by the phrase "pro tempore," "for the time." It means in the absence from here or the service of the Vice President as President of the United States. Either of these is the time in which the officer who was chosen may serve as President of this body, but neither of these relates in any way to the time at which the Senate may select or choose that officer.

I call the attention of the Senate also to another consideration. The Senator from Mississippi remarked that the power under this section is a power given

us to choose in the absence of the Vice President, and he spoke of the practice the other way. I have always understood it to have been a matter of courtesy merely that the Vice President should retire—simply a matter of courtesy and not a matter of necessity at all. He might as well be present, but as a matter of courtesy due to the position he does retire while the President pro tempore, his successor, is being chosen, not by any command or requirement of the Constitution, however.

The Senator from Mississippi claimed that we are only given this power to choose a President pro tempore in the absence and during the time of the absence of the Vice-President, because it is so inserted in the Constitution under the Senator's construction. Now, sir, I think it perfectly evident that without any such grant at all this body would have the right to choose a presiding officer. Supposing the Vice President is absent, supposing the President pro tempore is absent, and a quorum of the Senate meets here, are we powerless? Can we not call a member of the body to the chair? We do call a member of the body to the chair, and in England the House of Commons calls a member of the body to the chair in just such emergencies.

Mr. GEORGE. That is in the case of a resolution being passed.

Mr. TURPIE. I am not speaking of resolutions or enactments; I am speaking of absences for an hour or half an hour or a whole day of a presiding officer or of a substituted presiding officer of the body in either House. I am not saying that from the common-law power, but from the fact that no presiding officer should have the right to destroy legislation and to block it simply by his absence, intentional or unintentional. From the general legislative power granted by the States to this body and by the people to the members of the other body, we have a right to select a person temporarily to preside in the absence of both the President pro tempore and the Vice President, it being a necessary incident to the exercise of greater power. We exercise that power every day. Many a Senator here is called to the chair simply as a matter of courtesy to the Vice President, and takes it. Is such a Senator the President pro tempore of this body? He is not. Does it take a constitutional grant of power to authorize that action of the officer presiding? Not at all. On the contrary, I do not think that the makers of the Constitution, eminent and profound statesmen and learned as they were, would have taken the trouble to insert a clause into the Constitution authorizing either the Senate or the House to temporarily organize itself for a day or for an hour in the absence of the regular presiding officer. It would have occurred to them in a moment, as it had a hundred times in their practice in the Confederate Congress and in the Colonial Congress, that such power was exercised without legislation required by constitutional enactment, and that it would have been a frivolous, trivial thing to put it into an instrument embodying provisions of the importance of the Federal Constitution. No; the makers of the Constitution recognized the parliamentary power of making ex necessitate a temporary presiding officer at any time in the absence of the regular presiding officer; and in the absence of a Vice President they wished to make a permanent substitute for him and to make it a constitutional office, but not to prescribe the time of his election any more than that of any other officers, but only the time or occasion of his service.

Therefore I think that the office of President pro tempore of this body is a very high permanent position, one not provided for by statute. It is higher than any of the judges, any of the executive officers except the President and the Vice President. It comes in rank next to them because it is named in the Constitution, and is provided for in that instrument, the fundamental law of the Government. And to think that a temporary or casual election should have been provided for in such a fundamental measure or that there should be a perpetual procession of temporary elections, would be beneath the dignity of the body, and I think a fatal misconception and misconstruction of the power under the clause in the Federal Constitution so often referred to.

Mr. GEORGE. I have only a few words to say in reply to the speech made by the Senator from Indiana.

In the first place, I want to correct him, as I have my notes now made by myself from a reading of the Globe about these debates in 1854 and 1856. In 1854 David R. Atchison, of Missouri, was President pro tempore of the Senate. He was absent, and J. D. Bright, of Indiana, was elected. It was thought by some——

Mr. TURPIE. I will ask the favor of the Senator to allow me to interrupt him, as he asked the favor to interrupt me. I call his attention to the fact that I said nothing about those debates and know nothing about them.

Mr. GEORGE. It answers the Senator's argument very well, anyway.

David R. Atchison was President pro tempore, and he was absent. The Senate then elected Mr. Bright, and the question arose whether they could elect a temporary substitute for this absent pro tempore President, and the Senate held that, upon the election of Bright, Mr. Atchison's term ended.

In 1856 Mr. Bright was President of the Senate pro tempore, and he appointed a substitute on the 9th day of June of that year. He wrote a letter to Mr. Stuart, of Michigan, asking him to take the chair for the day. Mr. Bright was not in the building and therefore not constructively present, and the Senate held that he could not make any such appointment and they thereupon elected Mr. Stuart as President pro tempore, and it was held that Stuart's election superseded Bright's. They could not have two Presidents pro tempore. As Stuart did not want the office and as he understood very well that the Senate wanted Bright to be the President pro tempore of the Senate, he held the office about four or five days—I have forgotten which—and then, Bright having returned, he resigned and Bright was elected. That is all of the discussion of 1854 and 1856.

Now, in reply to the Senator from Indiana, about the power of the Senate to elect this officer at any time, I want to call attention to this fact: The very first time this question was raised in the Senate, in 1861, by Judge Collamer, of Vermont, he admitted that the President pro tempore must be elected during the absence of the Vice President. He held that was the occasion on which the President pro tempore was to be elected, but that the absence of the Vice President was the tenure of his office. The Senator from Indiana reverses all that, and he says that you may elect at any time, and that the absence of the Vice President is not the tenure of the office.

Another thing: From the beginning of the Government down to the present day, including the election of Mr. Ingalls as President pro tempore of this body, now holding that office, a man never was elected President pro tempore except in the absence of the Vice President. The Senator from Indiana seems to think that that was not done upon a construction that the power did not exist at any other time.

I call his attention to the speech made by Elbridge Gerry, which I quoted in my previous remarks made to the Senate, in which he replied to the suggestions made by Senators to him, asking him to vacate the chair as Vice President so that they might elect a President pro tempore, it being conceded on all sides that they could not elect without his absence, giving a reason why he refused to accede to the request which I have just stated. He said that it was his duty to be there, it was his duty to preside, and when he did vacate the chair it was only a few minutes before the adjournment of the Senate, it being admitted on all sides that the election could not take place until that time.

I call the Senator's attention to these facts so that he may look through the debates and the proceedings of Congress from the very beginning down to the present time, and he has the honor of making the first suggestion which ever has been made that a President pro tempore was elected in the absence of the Vice President simply as a matter of courtesy to him. On the contrary, from the beginning down to the present time, without a single break, it has been held, and was so held by this Senate when we elected the present occupant of the chair, that the power to elect did not exist until the Senate was in a state of disorganization by the absence of the Vice President.

Mr. EVARTS. If any other Senator desires to speak on this question I will yield the floor.

Mr. TURPIE. I should like to be heard a moment, if the Senator pleases. I do not known that I am entitled to the distinguished position assigned me by the Senator from Mississippi.

Mr. GEORGE. Yes, you are.

Mr. TURPIE. I think I am not. I think the position taken by myself is a familiar one in the debates in Congress on the subject heretofore. I have not heard any one here dispute that this question is one of fair discussion which has never been closed. There is no binding custom, there never has been any stare decisis, and we are discussing now what does the Constitution mean? The whole clause reads:

"The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President or when he shall exercise the office of President of the United States."

If the Senator's construction is right we must choose our "other officers" in the absence of the Vice President, that is very plain, just the same as we choose the President pro tempore, and we must "choose our other officers" when he

shall exercise the office of President of the United States. The construction which the Senator puts upon the section is entirely ungrammatical, illogical, and it is not supported by a single authority—I speak now of judicial construction—by this body. It is acquiesced in by practice, because every Vice President has had the courtesy to retire when the consideration of the question of his successor was open, but that retirement is not necessary and is not to be found in a legal construction of our own powers.

Mr. EVARTS. Mr. President, I will briefly state the reasons which have brought the Committee on Privileges and Elections to prefer this form of the exercise of the duty of the Senate, and then will leave it, as I hope, to a vote to be taken.

Senators will notice that this is a mere declaration of the competency of the Senate to choose a permanent President, who should take the chair in the absence of the Vice President or whenever he should act as President of the United States. It does not preclude in the least that the Senate should instantly upon any election limit that election to the then present absence of the Vice President if it should be desired, but the declaration of the power of the Senate to establish an office of President pro tempore is the object of this resolution.

Now for the historical situation. It is a little difficult to say, with all our veneration for the framers of the Constitution, that in putting in operation this new Constitution for a new Government those wise and good men at the first meeting under the Government knew more about the Constitution and its workings than their descendants after a hundred years of observation of it. The framers of the Constitution never claimed for themselves one moment or authority for their descendants in the Government that the Constitution, as they had left it in the executed instrument, was to be construed except by reason and experience as their descendants should find occasion. When, therefore, an appeal is made to a sub silentio course of procedure, by which the Senate took up pro re nata, and only pro re nata, the question whether they should choose a pro tempore President or one for the occasion of the then expected absence, they find no decision of this Senate upon a resolution such as is now presented for a definite determination. True, we have had one debate, the same as thus far we have had a debate in this Senate, and that was in 1861, in order to define this competency of the Senate, and the debate ended as has been stated.

The arguments on one side were presented by eminent men in favor of the resolution that this committee has presented and by other Senators to the contrary opinion, and there ended the matter. There was no resolution, there was no determination, but, as I have stated before, the whole burden of the debate shows that all the reason was in favor of the construction of this clause that the committee now gives to it, and the only answer was that up to that time it had not been advocated and had not been determined, but that the custom of the Senate had been satisfied without dealing with every case pro re nata and without harm to the public service. Now we have a situation in which we find, if this competency exists in the Senate, much reason why it should be put in exercise.

Let us understand for a moment a singular difference in the constitution of society and of population at the time of the formation of the Constitution and the present time. Then no man ever came here to the Senate, no man ever came here as Vice President and presided in the Senate without the expectation, almost the necessity, or remaining permanently at the seat of government without any casual absences, unless under some great stress of circumstances. When it was as much of a task and a burden to leave and return home as it was to come, there was no occasion for casual intercurrent absences to be looked into; there were none such in the contemplation or in the practice of the Senate.

Now, as we know perfectly well, under the system of our intercourse through transportation and by telegraph, there comes to be every now and then occasionally short absences that are contemplated either by Senators or by the Vice President of the United States. It is thought by us unseemly that on casual and unpremeditated occasions we should be called suddenly into the election of a President to take the chair when there may not be twenty Senators in their places or any considerable number that are accessible at the moment. We are to look, then, at the Constitution and see what it means, and finding this power we find a reason for exercising this faculty.

The Senator from Mississippi hangs wholly upon his own interpretation of this clause, not on any ancestral and reverent attitude about the past, and he takes so peremptory an attitude as to ask whether I had a right or the Senate

had a right to strike out a part of the Constitution. I made no response to that request. I have never asked and no Senator has ever asked that a clause of the Constitution should be stricken out. But the Senator was not satisfied to put it there on my silence, but he stated again that I did not dare to say it. Well, Mr. President, it was not a question of personal courage.

Mr. GEORGE. Oh, no; I did not mean that.

Mr. EVARTS. I treated the question just as it deserved. Nothing I had ever said, nothing I had ever hinted, nothing that anybody had ever said or had ever hinted, had suggested a right to strike out a clause of the Constitution, and I left the question unanswered. But the Senator followed it up by saying that I did not dare to answer?

Mr. President, what does this clause mean? Those who stickle for the technical construction of this sentence would have it read thus, very differently from what it does read. They would have it read, "And also in the absence of the Vice President, or in case he shall exercise the duty of President, the Senate may choose a President pro tempore." Does the clause read in that way? Is the substance, is the gist, is the meaning that our power arises in the absence of the Vice President? No, the natural meaning, the literal meaning, the common-sense meaning, is exactly in the opposite way. It is thus: The previous clause, having furnished us by the Constitution a President within the powers of the Senate, which, if unobserved by the Constitution at all, would have been the general right of a deliberative body to provide for its officers, including its presiding officer when there was not one provided for it, then proceeds to say, "and the Senate shall choose its other officers, and a President pro tempore."

That is the function, that is the power, and if you stop there you have the whole deposited power. But now, in order to guard against the least suspicion of the dominancy of the Vice President, although not a member of this body, the provision is that this pro tempore condition, this pro tempore action, this necessity of having a presiding officer is because the constitutional President of the Senate, the Vice President of the United States, is withdrawn. When we choose any of our officers, we elect them to fulfill the functions and satisfy the obligations that are imposed. This function, this obligation is to preside in the absence of the Vice President or in case of his permanent elevation to the discharge of the duties of President of the United States, temporarily or permanently. We therefore have what the Senator from Mississippi, I believe, will admit is within the competency of this Senate, the power to read the Constitution and know what it means. Quod necessarie intelligitur non deest—what is understood in the reading is not wanting from the words.

Mr. President, it is said that this is a question only of convenience, of dignity, of orderly proceeding. If we have the power, it is a good ground for our exercising it if we find all these reasons. If we have not the power, all the reasons which we may imagine, powerful, dangerous, injurious, could not give the power, but they might aid us in reading the clause to find what it meant for great occasions, for little occasions, for necessities, and for convenience.

Now, one can imagine very easily that in our habits of casual absences, of a telegram arriving at night, and the Vice President absenting himself because of a casual misfortune to himself or his family, that we should be in an awkward condition for the moment. But with this habit of occasional absences, which can not be imputed at all as out of the ordinary course and propriety of conduct on the part of either Senators or the President or Vice President, we should have some disorder in finding out in the signing of bills for half a day who was the President pro tempore and how he came to be chosen.

Mr. President, the question is a plain one, that we have power to choose an officer, and an officer as to which "pro tempore" means the occasion for which the necessity arises and the duty is given.

The PRESIDENT pro tempore. Is the Senate ready for the question upon agreeing to the resolution? The Chair understands the amendment suggested by the Senator from Indiana [Mr. Turpie] has been accepted by unanimous consent.

Mr. EVARTS. Yes, sir.

Mr. GEORGE. I should like to hear the resolution read as amended.

The PRESIDENT pro tempore. The resolution will be read as modified.

The Secretary read as follows:

"*Resolved*, That it is competent for the Senate to elect a President pro tempore, who shall hold the office during the pleasure of the Senate and until another is elected, and shall execute the duties thereof during all future absences of the Vice President, until the Senate shall otherwise order."

The resolution was agreed to.

Thursday, April 3, 1890 (Journal, p. 208).

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. Cullom submitted the following resolution, which was considered and agreed to:

Resolved, That John J. Ingalls, a Senator from the State of Kansas, be, and he hereby is, elected President pro tempore of the Senate, to hold office during the pleasure of the Senate and in accordance with the resolution of the Senate adopted on the 12th day of March, 1890, on the subject.

Whereupon Mr. Ingalls advanced to the desk, and the oath of office having been administered to him by the Presiding Officer, he took the chair as President pro tempore.

Saturday, July 19, 1890 (Journal, p. 433).

Mr. Shelby M. Cullom, a Senator from the State of Illinois, called the Senate to order, and the Secretary read the following letter:

UNITED STATES SENATE,
Washington, D. C., July 19, 1890.

I name the Senator from Illinois, Mr. Cullom, to perform the duties of the Chair to-day.

JOHN J. INGALLS,
President pro tempore.

Whereupon Mr. Cullom took the chair.

Saturday, September, 13, 1890 (Journal, p. 517).

Mr. Blair called the Senate to order and the Chief Clerk read the following letter:

UNITED STATES SENATE,
Washington, D. C., September 13, 1890.

I name the Senator from New Hampshire, the Hon. Henry W. Blair, to perform the duties of the Chair to-day.

JOHN J. INGALLS,
President pro tempore.

Whereupon Mr. Blair took the chair.

FIFTY-FIRST CONGRESS, SECOND SESSION.

Thursday, February 19, 1891 (Journal, p. 157).

RESIGNATION OF THE PRESIDENT PRO TEMPORE.

The President pro tempore tendered his resignation, addressing the Senate as follows:

SENATORS: Four years ago, on the 25th of the present month, I was chosen President of the Senate pro tempore, and by successive elections was continued in that station until the 3d of April last, when, under a resolution of March 12 preceding, I was unanimously designated to preside during future absences of the Vice President and at the pleasure of the Senate, a function not before exercised by any Member of the Body during the century of its existence.

The Senate having been formally notified that my service here will end with the close of this Congress, in order to avoid embarrassment and to afford opportunity for deliberation, I now tender my resignation as President of the Senate pro tempore, to take effect upon the election of my successor in office.

It would be an affectation of indifference, unworthy of the Senate, unworthy of myself, and unworthy of this occasion, were I to pretend to be unconscious of the distinction that has been bestowed upon me by the suffrages of the Senate, and I should be alike devoid of sensibility and destitute of gratitude were I to withhold the expression of my grateful appreciation of the confidence and the consideration with which I have been so long honored by the most dignified, the most important, and the most influential legislative assembly in the world.

Monday, March 2, 1891 (Journal, p. 202).

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. Sherman submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That Charles F. Manderson, a Senator from the State of Nebraska, be, and he hereby is, elected President pro tempore of the Senate, to hold office during the pleasure of the Senate, and in accordance with the resolution of the Senate adopted on the 12th day of March, 1890, on the subject.

Whereupon Mr. Manderson appeared at the desk and the oath of office was administered to him by the Vice President.

FIFTY-SECOND CONGRESS, FIRST SESSION.

Monday, May 23, 1892 (Journal, p. 275).

Mr. Shelby M. Cullom, a Senator from the State of Illinois, called the Senate to order, and the Secretary read the following letter:

UNITED STATES SENATE,
Washington, May 20, 1892.

I name Hon. Shelby M. Cullom, a Senator from the State of Illinois, to perform the duties of the Chair on Monday the 23d instant.

CHARLES F. MANDERSON,
President pro tempore United States Senate.

Whereupon Mr. Cullom took the chair.

SESSION OF SENATE SPECIALLY CALLED SATURDAY, MARCH 4, 1893.

(Following the close of the Fifty-second Congress.)

Wednesday, March 22, 1893 (Journal, 52d Cong., 2d sess., pp. 175–176).

RESIGNATION AND ELECTION OF PRESIDENT PRO TEMPORE.

Mr. Manderson tendered his resignation as President per tempore of the Senate and addressed the Senate as follows:

* * * * * * *

I now tender my resignation of the position to the Senate and ask to be excused from further duty in that regard.

The resignation was then accepted;

Whereupon, Mr. Gorman submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That the Senate now proceed to elect a President pro tempore of the Senate.

In pursuance of the foregoing resolution, Mr. Cockrell submitted the following resolution, which was considered by unanimous consent and agreed to:

Resolved, That Isham G. Harris, a Senator from the State of Tennessee, be, and he hereby is, elected President pro tempore of the Senate, to hold office during the pleasure of the Senate and in accordance with the resolution of the Senate adopted on the 12th day of March, 1890, on the subject.

Mr. Harris appeared at the desk and the oath of office was administered to him by the Vice President.

Mr. Isham G. Harris served as President pro tempore through first and second sessions of Fifty-third Congress.

FIFTY-THIRD CONGRESS, THIRD SESSION.

Monday, January 7, 1895 (Journal, p. 40).

PRESIDENT PRO TEMPORE.

The Vice President and President pro tempore being absent, the Secretary called the Senate to order;

Whereupon, Mr. Gorman submitted the following resolution, which was considered and agreed to:

Resolved, That in the absence of the Vice President and President pro tempore, Mr. M. W. Ransom, a Senator from the State of North Carolina, be, and he is hereby, chosen President pro tempore of the Senate.

On motion by Mr. Gorman, and by unanimous consent,

Ordered, That the oath of office be administered to the President pro tempore elect by Mr. Justin S. Morrill, a Senator from the State of Vermont.

The oath prescribed by law was accordingly administered to Mr. Ransom, and he took the chair.

Thursday, January 10, 1895 (Journal, p. 45).

PRESIDENT PRO TEMPORE.

The President pro tempore addressed the Senate as follows:

SENATORS: Deeply sensible of the high honor which your unanimous designation of me as President pro tempore of the Senate conferred, and profoundly grateful, as I should be, to each one of you for that invaluable testimony of your regard, I now, in accordance with my declared purpose when I took the chair, the reasons for my further occupancy of it having ceased, resign the exalted position which you so generously confided to me, to take effect immediately upon the election of my successor. I can not permit this moment to pass without expressing my inalienable attachment to you, Senators, my affectionate interest for your happiness and honor, and my fervent and devoted aspirations for the perpetual usefulness and glory of the Senate.

Mr. Gorman submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That Isham G. Harris, a Senator from the State of Tennessee, be, and he hereby is, elected President pro tempore of the Senate, to hold office during the pleasure of the Senate.

Mr. Harris appeared at the desk, and the oath of office having been administered to him by the President pro tempore, he took the chair.

FIFTY-FOURTH CONGRESS, FIRST SESSION.

Friday, February 7, 1896 (Journal, p. 117).

ELECTION OF PRESIDENT PRO TEMPORE.

The Vice President being absent, the Secretary called the Senate to order and read the following communication:

VICE PRESIDENT'S CHAMBER,
Washington, February 7, 1896.

SIR: It will be impossible for me to be present at the opening of the Senate this morning. You will, therefore, please call the Senate to order, as required by law.

Very respectfully,

A. E. STEVENSON.

Hon. W. R. Cox,
Secretary United States Senate.

Whereupon, Mr. Hale submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That William P. Frye, a Senator from the State of Maine, be, and he hereby is, elected President of the Senate, to hold office during the pleasure of the Senate, and in accordance with the resolution of the Senate adopted on the 12th day of March, 1890, on the subject.

Mr. Frye advanced to the desk, and the oath having been administered to him by the Secretary, he assumed the chair and addressed the Senate as follows:

SENATORS: I am profoundly grateful for this exceedingly generous expression of your confidence. I can only try to justify it by bringing to the discharge of the duties of the office to which you have elected me fidelity and strict impartiality.

Thursday, June 4, 1896 (Journal, p. 373).

Mr. O. H. Platt, a Senator from the State of Connecticut, called the Senate to order, and the Secretary read the following letter:

JUNE 3, 1896.

To the Senate:

In the absence of the Vice President and of the President pro tempore of the Senate, by authority of Rule I, I hereby name O. H. Platt, a Senator from Connecticut, to perfrom the duties of the chair during the 4th day of June, 1896.

WM. P. FRYE,
President pro tempore.

Whereupon, Mr. Platt took the chair.

Thursday, June 4, 1896 (Journal, p. 376).

On motion by Mr. Gorman, and by unanimous consent,

Ordered, That in the event of the continued absence of the Vice President and the President pro tempore, Mr. Platt perform the duties of the chair to-morrow, the 5th instant.

Friday, June 5, 1896 (Journal, p. 377).

Under the designation by the Senate yesterday, Mr. Platt resumed the chair.

FIFTY-FIFTH CONGRESS, FIRST SESSION.

Monday, April 26, 1897 (Journal, p. 63).

The Vice President and the President pro tempore being absent, Mr. Knute Nelson, a Senator from the State of Minnesota, called the Senate to order, and the Chief Clerk read the following letter:

UNITED STATES SENATE,
Washington, D. C., April 26, 1897.

I hereby appoint the Hon. Knute Nelson, a Senator from Minnesota, to perform the duties of the chair in the United States Senate this day, I being necessarily absent.

WM. P. FRYE,
President pro tempore.

Whereupon, Mr. Nelson took the chair.

FIFTY-FIFTH CONGRESS, THIRD SESSION.

Saturday, January 14, 1899 (Journal, p. 54).

Mr. J. H. Gallinger, a Senator from the State of New Hampshire, called the Senate to order, and the Secretary read the following letter:

To the Senate:

In the absence of the Vice President and myself, I appoint Senator Gallinger to preside over the Senate.

WM. P. FRYE,
President pro tempore.

JANUARY 14, 1899.

Whereupon Mr. Gallinger took the chair.

Thursday, January 19, 1899 (Journal, p. 62).

Mr. O. H. Platt, a Senator from the State of Connecticut, called the Senate to order, and the Secretary read the following letter:

UNITED STATES SENATE,
Washington, D. C., January 18, 1899.

To the Senate:

In the absence of the Vice President and myself, I appoint O. H. Platt, a Senator from Connecticut, to preside to-day.

WM. P. FRYE.

Whereupon Mr. Platt of Connecticut assumed the chair.

FIFTY-SIXTH CONGRESS, FIRST SESSION.

Monday, December 11, 1899 (Journal, p. 33).

PRESIDENT PRO TEMPORE ABSENT.

Mr. O. H. Platt, a Senator from the State of Connecticut, called the Senate to order, and the Secretary read the following letter:

WASHINGTON, D. C., *December 11, 1899.*

To the Senate:

I, William P. Frye, President pro tempore of the Senate, being absent from the city of Washington, hereby designate Senator O. H. Platt to perform the duties of the Chair on this day.

WM. P. FRYE.

Whereupon Mr. Platt of Connecticut took the chair.

Tuesday, May 22, 1900 (Journal, p. 381).

PRESIDENT PRO TEMPORE.

Mr. O. H. Platt, a Senator from the State of Connecticut, called the Senate to order, and the Secretary read the following letter:

PRESIDENT PRO TEMPORE,
United States Senate.

To the Senate:

I name Hon. O. H. Platt, Senator from Connecticut, to perform the duties of the Chair during my absence.

WM. P. FRYE,
President pro tempore.

MAY 21, 1900.

Whereupon Mr. Platt of Connecticut assumed the chair.

FIFTY-SIXTH CONGRESS, SECOND SESSION.

Friday, December 21, 1900 (Journal, p. 49).

Mr. Charles W. Fairbanks, a Senator from the State of Indiana, called the Senate to order, and the Secretary read the following letter:

PRESIDENT PRO TEMPORE UNITED STATES SENATE,
December 21, 1900.

I hereby appoint Hon. Charles W. Fairbanks, Senator from the State of Indiana, to preside over the Senate during my absence.

WILLIAM P. FRYE,
President pro tempore.

Whereupon Mr. Fairbanks assumed the chair.

Saturday, January 12, 1901 (Journal, p. 71).

PRESIDENT PRO TEMPORE ABSENT.

Mr. George C. Perkins, a Senator from the State of California, called the Senate to order, and the Secretary read the following letter:

UNITED STATES SENATE,
Washington, D. C., January 11, 1901.

I hereby name Mr. Perkins, senior Senator from California, to perform the duties of the Chair during my absence, Saturday, the 12th day of January, instant.

WM. P. FRYE,
President pro tempore.

Whereupon Mr. Perkins assumed the chair.

Saturday, February 16, 1901 (Journal, p. 175).

PRESIDENT PRO TEMPORE ABSENT.

Mr. George C. Perkins, a Senator from the State of California, called the Senate to order, and the Chief Clerk read the following letter:

PRESIDENT PRO TEMPORE UNITED STATES SENATE,
February 16.

I hereby appoint Senator Perkins to preside over the Senate during my absence.

WM. P. FRYE,
President pro tempore.

Whereupon Mr. Perkins assumed the chair.

SESSION OF THE SENATE SPECIALLY CALLED MONDAY, MARCH 4, 1901.

(Following the close of the Fifty-sixth Congress.)

Thursday, March 7, 1901 (Journal, 56th Cong., 2d sess., p. 283).

PRESIDENT PRO TEMPORE.

Mr. Allison submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That the Senate now proceed to the election of a President of the Senate pro tempore.

Mr. Allison submitted the following resolution; which was considered by unanimous consent and unanimously agreed to:

Resolved, That William P. Frye, a Senator from the State of Maine, be, and he hereby is, elected President of the Senate pro tempore, to hold office during the pleasure of the Senate and in accordance with the resolution of the Senate adopted on the 12th day of March, 1890, on the subject.

On motion by Mr. Allison,

Ordered, That two Senators be appointed to notify the Senator from Maine of his election as President pro tempore;

Whereupon the Presiding Officer (Mr. Cockrell in the chair) appointed Mr. Allison and Mr. Morgan.

Mr. Frye entered the Senate Chamber and was escorted to the Vice President's chair by Mr. Allison and Mr. Morgan.

Upon taking the chair the President pro tempore addressed the Senate as follows:

SENATORS: My cup is full and running over. The expressions of your confidence which I have received within the last few days make me supremely happy and obliged to you. I am overwhelmed by them and have nothing more to say.

Saturday, March 9, 1901 (Journal, p. 283).

PRESIDENT PRO TEMPORE SWORN.

The Vice President administered the oath of office to Hon. William P. Frye, a Senator from the State of Maine, chosen President pro tempore of the Senate on the 7th instant.

FIFTY-SEVENTH CONGRESS, FIRST SESSION.

Thursday, December 19, 1901 (Journal, p. 61).

PRESIDENT PRO TEMPORE ABSENT.

Mr. George C. Perkins, a Senator from the State of California, called the Senate to order, and the Chief Clerk read the following letter:

PRESIDENT PRO TEMPORE UNITED STATES SENATE,
December 19, 1901.

I name Mr. Perkins, Senator from California, to preside over the Senate during my absence to-day.

WILLIAM P. FRYE,
President pro tempore.

Whereupon Mr. Perkins assumed the chair.

Monday, May 19, 1902 (Journal, p. 415).

PRESIDENT PRO TEMPORE ABSENT.

Mr. O. H. Platt, a Senator from the State of Connecticut, called the Senate to order and the Chief Clerk read the following letter:

PRESIDENT PRO TEMPORE UNITED STATES SENATE,
May 19.

To the Senate:

I name Mr. Platt, Senator from the State of Connecticut, to perform the duties of the Chair during my absence.

WM. P. FRYE,
President pro tempore.

Whereupon Mr. Platt of Connecticut took the chair.

SESSION OF THE SENATE SPECIALLY CALLED AT THE CLOSE OF THE FIFTY-SEVENTH CONGRESS THURSDAY, MARCH 5, 1903.

Monday, March 9, 1903 (Journal, 57th Cong., 2d sess., p. 258).

PRESIDENT PRO TEMPORE ABSENT.

Mr. John Kean, a Senator from the State of New Jersey, called the Senate to order, and the Chief Clerk read the following letter:

PRESIDENT PRO TEMPORE UNITED STATES SENATE,
Washington, D. C., March 5, 1903.

To the Senate:

I hereby name Hon. John Kean, Senator from the State of New Jersey, to perform the duties of the Chair during my absence.

WILLIAM P. FRYE,
President pro tempore.

Whereupon Mr. Kean assumed the chair.

FIFTY-EIGHTH CONGRESS, FIRST SESSION.

Wednesday, November 25, 1903 (Journal, p. 40).

Mr. John Kean, a Senator from the State of New Jersey, called the Senate to order, and the Chief Clerk read the following letter:

PRESIDENT PRO TEMPORE UNITED STATES SENATE,
November 25, 1903.

To the honorable Senate of the United States:

I hereby appoint John Kean, Senator from New Jersey, to perform the duties of the Chair during my absence.

WILLIAM P. FRYE,
President pro tempore.

Whereupon Mr. Kean assumed the chair.

FIFTY-EIGHTH CONGRESS, SECOND SESSION.

Friday, December 18, 1903 (Journal, p. 42).

Mr. George C. Perkins, a Senator from the State of California, called the Senate to order, and the Chief Clerk read the following letter:

PRESIDENT PRO TEMPORE UNITED STATES SENATE.

To the honorable Senate of the United States:

I hereby appoint George C. Perkins, Senator from California, to perform the duties of the Chair during my absence.

WILLIAM P. FRYE,
President pro tempore.

Whereupon Mr. Perkins assumed the chair.

FIFTY-EIGHTH CONGRESS, THIRD SESSION.

Monday, December 19, 1904 (Journal, p. 46).

PRESIDENT PRO TEMPORE ABSENT.

Mr. George C. Perkins, a Senator from the State of California, called the Senate to order, and the Chief Clerk read the following letter:

PRESIDENT PRO TEMPORE UNITED STATES SENATE,
December 16, 1904.

To the United States Senate:

I hereby appoint the senior Senator from California to perform the duties of the Chair during my absence.

WILLIAM P. FRYE,
President pro tempore.

Whereupon Mr. Perkins assumed the chair.

Wednesday, January 11, 1905 (Journal, p. 67).

PRESIDENT PRO TEMPORE ABSENT.

Mr. George C. Perkins, a Senator from the State of California, called the Senate to order, and the Chief Clerk read the following letter:

PRESIDENT PRO TEMPORE UNITED STATES SENATE,
January 11, 1905.

To the United States Senate:

I hereby appoint the senior Senator from California to perform the duties of the Chair during my absence.

WILLIAM P. FRYE,
President pro tempore.

Whereupon Mr. Perkins assumed the chair.

FIFTY-NINTH CONGRESS, FIRST SESSION.

Friday, June 15, 1906 (Journal, p. 611).

VICE PRESIDENT ABSENT.

The Vice President and President pro tempore being absent, Mr. Kean, a Senator from the State of New Jersey, called the Senate to order, and the Assistant Secretary read the following letter:

PRESIDENT PRO TEMPORE, UNITED STATES SENATE.

To the Senate:

Being temporarily absent from the Senate, I hereby appoint John Kean to perform the duties of the Chair.

WM. P. FRYE,
President pro tempore.

JUNE 15, 1906.

Whereupon Mr. Kean assumed the chair.

Saturday, June 16, 1906 (Journal, p. 615).

VICE PRESIDENT ABSENT.

The Vice President and the President pro tempore being absent, Mr. John Kean, a Senator from the State of New Jersey, called the Senate to order, and the Assistant Secretary read the following letter:

PRESIDENT PRO TEMPORE, UNITED STATES SENATE,
June 16, 1906.

To the Senate:

Being temporarily absent from the Senate, I hereby appoint Senator John Kean to perform the duties of the Chair.

WM. P. FRYE,
President pro tempore.

Whereupon Mr. Kean assumed the chair.

SIXTIETH CONGRESS, FIRST SESSION.

Thursday, December 5, 1907 (Journal, p. 47).

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. Allison submitted the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That the Senate now proceed to the election of a President of the Senate pro tempore.

Mr. Allison submitted the following resolution:

Resolved, That William P. Frye, a Senator from the State of Maine, be, and he hereby is, elected President of the Senate pro tempore, to hold office during the pleasure of the Senate and in accordance with the resolution of the Senate adopted on the 12th day of March, 1890, on the subject.

The Senate proceeded by unanimous consent to consider the said resolution; and

On motion by Mr. Culberson to amend the resolution by striking out the name of "William P. Frye" and inserting in lieu thereof the name of "John W. Daniel."

The motion was disagreed to.

The question recurring on agreeing to the resolution.

The resolution was agreed to.

Thursday, December 12, 1907 (Journal, p. 65).

PRESIDENT PRO TEMPORE.

On motion by Mr. Allison,

Ordered, That two Senators be appointed to notify the Senator from Maine of his election as President pro tempore;

Whereupon the Presiding Officer (Mr. Perkins in the chair) appointed Mr. Allison and Mr. Bacon.

Mr. Frye entered the Senate Chamber and was escorted to the Vice President's chair by Mr. Allison and Mr. Bacon.

Upon taking the chair the President pro tempore addressed the Senate as follows:

SENATORS: Having held this honorable position for many years, my present reelection was equally unexpected and undeserved. But as an expression of your continued confidence in me I appreciate the compliment very highly indeed. The fidelity of the Vice President, who is our presiding officer, is such that the duties incumbent upon me will be very light, and I accept this office with the warmest possible thanks to the Senate.

Monday, December 16, 1907 (Journal, p. 68).

PRESIDENT PRO TEMPORE SWORN.

The Vice President administered the oath of office to William P. Frye, a Senator from the State of Maine, chosen President pro tempore of the Senate on the 5th instant.

SIXTY-FIRST CONGRESS, SECOND SESSION.

The President pro tempore in the absence of the Vice President and of himself designated the following-named Senators to occupy the chair during his temporary absence:

Monday, March 7, 1910 (Journal, p. 198), Jacob H. Gallinger.
Wednesday, March 9, 1910 (Journal, p. 204), John Kean.
Monday, March 14, 1910 (Journal, p. 214), Augustus O. Bacon.
Tuesday, March 15, 1910 (Journal, p. 218), John Kean.
Friday, March 25, 1910 (Journal, p. 247), Jacob H. Gallinger.
Monday, April 4, 1910 (Journal, p. 263–264), John Kean.
Tuesday, April 5, 1910 (Journal, p. 269), Henry Cabot Lodge.
Monday, April 11, 1910 (Journal, p. 277), Porter J. McCumber.
Monday, April 18, 1910 (Journal, p. 298), John Kean.
Tuesday, April 19, 1910 (Journal, p. 301), Jacob H. Gallinger.

SIXTY-FIRST CONGRESS, THIRD SESSION.

Wednesday, December 21, 1910 (Journal, p. 57).

VICE PRESIDENT AND PRESIDENT PRO TEMPORE ABSENT.

The Vice President and President pro tempore being absent, Mr. Kean, a Senator from the State of New Jersey, called the Senate to order, and the Assistant Secretary read the following letter:

PRESIDENT PRO TEMPORE, UNITED STATES SENATE,
Washington, D. C., December 21, 1910.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. John Kean, Senator from New Jersey, to perform the duties of the Chair.

WM. P. FRYE,
President pro tempore.

Whereupon Mr. Kean assumed the chair.

SIXTY-SECOND CONGRESS. FIRST SESSION.

Monday, April 10, 1911 (Journal, p. 12).

VICE PRESIDENT ABSENT.

The Vice President and President pro tempore being absent, Mr. William Alden Smith, a Senator from the State of Michigan, called the Senate to order, and the Assistant Secretary read the following letter:

PRESIDENT PRO TEMPORE, UNITED STATES SENATE,
April 10, 1911.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. William Alden Smith, Senator from Michigan, to perform the duties of the Chair.

WILLIAM P. FRYE,
President pro tempore.

Whereupon Mr. Smith of Michigan assumed the chair.

Monday, April 24, 1911 (Journal, p. 35).

THE VICE PRESIDENT.

The Vice President and President pro tempore being absent. Mr. William Alden Smith, a Senator from the State of Michigan, called the Senate to order, and the Assistant Secretary read the following letter:

PRESIDENT PRO TEMPORE, UNITED STATES SENATE,
April 24, 1911.

Being temporarily absent from the Senate, I appoint Hon. William Alden Smith, Senator from Michigan, to perform the duties of the Chair.

WM. P. FRYE,
President pro tempore.

Whereupon Mr. Smith of Michigan assumed the chair.

Thursday, April 27, 1911 (Journal, p. 38).

THE VICE PRESIDENT.

The Vice President resumed the chair.

RESIGNATION OF THE PRESIDENT PRO TEMPORE.

The Vice President laid before the Senate the following letter of the President of the Senate pro tempore:

PRESIDENT PRO TEMPORE UNITED STATES SENATE,

To Hon. JAMES S. SHERMAN,
President of the Senate.

DEAR SIR: Will you communicate to the Senate my resignation as President pro tempore of the Senate and convey to them my grateful thanks for the long service they have given me in this honorable office?

Sincerely, yours,

WM. P. FRYE,
President pro tempore.

WASHINGTON, *April 27, 1911.*

The letter was read.

Ordered, That it lie on the table.

Thursday, May 11, 1911 (Journal, pp. 60–62).

ELECTION OF A PRESIDENT OF THE SENATE PRO TEMPORE.

On motion by Mr. Cullom, that the Senate proceed to the election of a President of the Senate pro tempore.

The motion was agreed to.

The Senate proceeded to the election of a President of the Senate pro tempore, and

Mr. Cullom nominated Mr. Gallinger, a Senator from the State of New Hampshire;

Mr. Martin of Virginia nominated Mr. Bacon, a Senator from the State of Georgia; and

Mr. La Follette nominated Mr. Clapp, a Senator from the State of Minnesota.

Whereupon,

The Presiding Officer (Mr. Lodge in the chair) directed the roll to be called,

When,

The whole number of votes was found to be 73, of which 37 make a majority. Mr. Gallinger had 32, Mr. Bacon had 35, Mr. Clapp had 4, Mr. Bristow had 1, and Mr. Tillman had 1.

Those who voted for Mr. Gallinger are,

Messrs. Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, du Pont, Gamble, Guggenheim, Heyburn, Jones, Lippitt, Lodge, Lorimer, McLean, Nelson, Nixon, Oliver, Page, Penrose, Richardson, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bryan, Chamberlain, Chilton, Culberson, Davis, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of Alabama, Kern, Lea, Martin of Virginia, Martine of New Jersey, Myers, Newlands, O'Gorman, Owen, Paynter, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Gronna, La Follette, and Poindexter.

Mr. Clapp voted for Mr. Bristow.

Mr. Bacon voted for Mr. Tillman.

There was consequently no choice.

So,

The Presiding Officer directed the roll to be called,

When,

The whole number of votes was found to be 74, of which 38 make a majority. Mr. Gallinger had 32, Mr. Bacon had 35, Mr. Clapp had 4, Mr. Tillman had 1, Mr. Bristow had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, du Pont, Gamble, Guggenheim, Heyburn, Jones, Lippitt, Lodge, Lorimer, McLean, Nelson, Nixon, Oliver, Page, Penrose, Richardson, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bryan, Chamberlain, Chilton, Culberson, Davis, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of Alabama, Kern, Lea, Martin of Virginia, Martine of New Jersey, Myers, Newlands, O'Gorman, Owen, Paynter, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Gronna, La Follette, and Poindexter.

Mr. Bacon voted for Mr. Tillman.

Mr. Clapp voted for Mr. Bristow.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice.

The Presiding Officer (Mr. Lodge in the chair) called the attention of the Senate to the fact that, having been called to the chair by the Vice President before the Senate had proceeded to the election of a President of the Senate pro tempore, he did not under clause 2 of Rule I of the Senate have the right to occupy the chair at this time.

On motion by Mr. Bailey, and by unanimous consent,

Ordered, That clause 2 of Rule I of the standing rules of the Senate be suspended, and that the present occupant of the chair should preside during the election of a President of the Senate pro tempore.

The question being the election of a President of the Senate pro tempore,

The Presiding Officer directed the roll to be called,

When,

The whole number of votes was found to be 74, of which 38 make a majority. Mr. Gallinger had 32, Mr. Bacon had 35, Mr. Clapp had 4, Mr. Tillman had 1, Mr. Bristow had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, du Pont, Gamble, Guggenheim, Heyburn, Jones, Lippitt, Lodge, Lorimer, McLean, Nelson, Nixon, Oliver, Page, Penrose, Richardson, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bryan, Chamberlain, Chilton, Culberson, Davis, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of

Alabama, Kern, Lea, Martin of Virginia, Martine of New Jersey, Myers, Newlands, O'Gorman, Owen, Paynter, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Gronna, La Follette, and Poindexter.

Mr. Bacon voted for Mr. Tillman.

Mr. Clapp voted for Mr. Bristow.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice.

Before the announcement of the result of the vote,

Mr. Heyburn called the attention of the Chair to the fact that there were Senators present and not voting, and named Mr. Dixon and Mr. McCumber, and asked that under Rule XII of the Senate they be required to assign their reasons for declining to vote;

Whereupon,

The Presiding Officer directed the names of Mr. Dixon and Mr. McCumber to be called; and

Mr. Dixon and Mr. McCumber having declined to vote and having assigned their reasons therefor,

The Presiding Officer submitted the question to the Senate: Shall the Senators, for the reasons assigned by them, be excused from voting?

It was determined in the affirmative.

So the Senators were excused from voting.

The question being the election of a President of the Senate pro tempore,

The Presiding Officer directed the roll to be called,

When,

The whole number of votes was found to be 74, of which 38 make a majority. Mr. Gallinger had 32, Mr. Bacon had 35, Mr. Clapp had 4, Mr. Tillman had 1, Mr. Bristow had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, du Pont, Gamble, Guggenheim, Heyburn, Jones, Lippitt, Lodge, Lorimer, McLean, Nelson, Nixon, Oliver, Page, Penrose, Richardson, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bryan, Chamberlain, Chilton, Culberson, Davis, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of Alabama, Kern, Lea, Martin of Virginia, Martine of New Jersey, Myers, Newlands, O'Gorman, Owen, Paynter, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Gronna, La Follette, and Poindexter.

Mr. Bacon voted for Mr. Tillman.

Mr. Clapp voted for Mr. Bristow.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice.

The question being the election of a President of the Senate pro tempore,

The Presiding Officer directed the roll to be called,

When,

The whole number of votes was found to be 74, of which 38 make a majority. Mr. Gallinger had 32, Mr. Bacon had 35, Mr. Clapp had 4, Mr. Tillman had 1, Mr. Bristow had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, du Pont, Gamble, Guggenheim, Heyburn, Jones, Lippitt, Lodge, Lorimer, McCumber, McLean, Nelson, Nixon, Oliver, Page, Penrose, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bryan, Chamberlain, Chilton, Culberson, Davis, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of Alabama, Kern, Lea, Martin of Virgina, Martine of New Jersey, Myers, Newlands, O'Gorman, Owen, Paynter, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Gronna, La Follette, and Poindexter.

Mr. Bacon voted for Mr. Tillman.

Mr. Clapp voted for Mr. Bristow.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice.

QUESTIONS OF ORDER.

Mr. Stone raised a question of order, viz, that a Senator having received a plurality vote should be declared elected President of the Senate pro tempore.

The Presiding Officer overruled the question of order and decided that under the Constitution of the United States, in the absence of any provision to the contrary, all officers of both Houses must be elected by a majority; and in the practice of the House, where there have been contests very frequently, a majority vote has been and is required.

Mr. Stone raised a further question of order, viz, that the hour of 4 o'clock having arrived, it was the duty of the Presiding Officer to lay before the Senate the unfinished business.

The Presiding Officer overruled the question of order, and decided that the business before the Senate was privileged and could not be interrupted by the unfinished business, or in any other way, except by the Senate laying aside the business before it or by adjourning or going into executive session, and that the present Presiding Officer occupied his position under a suspension of Rule I by the unanimous consent of the Senate, therefore during his occupancy of the chair no business is in order except that of choosing a President pro tempore.

ELECTION OF PRESIDENT OF THE SENATE PRO TEMPORE.

The question being the election of a President of the Senate pro tempore,

The Presiding Officer directed the roll to be called,

When,

The whole number of votes was found to be 74, of which 38 make a majority. Mr. Gallinger had 32, Mr. Bacon had 35, Mr. Clapp had 4, Mr. Tillman had 1, Mr. Bristow had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, du Pont, Gamble, Guggenheim, Heyburn, Jones, Lippitt, Lodge, Lorimer, McCumber, McLean, Nelson, Nixon, Oliver, Page, Penrose, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bryan, Chamberlain, Chilton, Culberson, Davis, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of Alabama, Kern, Lea, Martin of Virginia, Martine of New Jersey, Myers, Newlands, O'Gorman, Owen, Paynter, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Gronna, La Follette, and Poindexter.

Mr. Bacon voted for Mr. Tillman.

Mr. Clapp voted for Mr. Bristow.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice.

So,

The Presiding Officer directed the roll to be called,

When,

The whole number of votes was found to be 72, of which 37 make a majority. Mr. Gallinger had 31, Mr. Bacon had 34, Mr. Clapp had 4, Mr. Tillman had 1, Mr. Bristow had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, du Pont, Gamble, Guggenheim, Heyburn, Jones, Lippitt, Lodge, Lorimer, McCumber, McLean, Nelson, Nixon, Oliver, Page, Penrose, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bryan, Chamberlain, Chilton, Culberson, Davis, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of Alabama, Kern, Lea, Martin of Virginia, Martine of New Jersey, Myers, Newlands, O'Gorman, Owen, Paynter, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Gronna, La Follette, and Poindexter.

Mr. Bacon voted for Mr. Tillman.

Mr. Clapp voted for Mr. Bristow.
Mr. Gallinger voted for Mr. Lodge.
There was consequently no choice.
See also proceedings in the Congressional Record, pages 1184–1189.

Mr. ROOT. I object to the Senator from Idaho being excused from voting and ask that the rule of the Senate, Rule XII, be enforced.

Mr. BAILEY. Mr. President, I suggest that this is not a case within the rule of excusing a Senator from voting, but the vote is withheld in pursuance of a pair, a practice long sanctioned by the Senate; and in such a case a Senator does not need to be excused from voting.

The PRESIDING OFFICER. The Chair thinks that as a pair is a reason for not voting under the rule, excusing a Senator from voting should be submitted to the Senate after the roll call and before the result is announced.

Mr. BAILEY. That makes it about as broad as it is long. If a pair is a sufficient reason for not voting, the announcement of the pair, of course, is a statement of the reason, the only difference being that the reason must be approved by the Senate. By the long, uniform, and unbroken practice of the Senate, a Senator is permitted to pair. And suppose a Senator were absent, either sick or upon the public business, and his pair sat here, obliged by every fair sense of obligation to respect that pair, does the Senate think it would have the power to compel him to break it?

Mr. President, the Senate could enter that kind of an order against me and I would defy it to the point of expulsion. If I had given a Senator my word that I would protect him in his absence, the Senate could not compel me to either break it or withdraw it.

I think the Senate will hesitate long before it will assert its right to settle a question of that kind for one of its Members. I think the rule was intended where wholly apart from a pair a Senator asks to be excused. The Senator from New Hampshire [Mr. Gallinger] on the first roll call this afternoon asked to be excused upon the ground that he had an interest in the matter. My own opinion is that it is not such an interest as would have disqualified him. I think the Senator from New Hampshire and my friend from Georgia are a little oversensitive about this matter. If I had been in the position of either, I would have voted for myself as the nominee of my party. I have done it, and I believe that every time a vote is taken a man ought to support his party's nominee.

But I waive that. I state it only as one of the questions which the Senate might decide, as to whether it was a good excuse, because that rests in the judgment of a Senator. But whether or not a Senator shall keep his pair rests with the conscience of the Senator, and I do not acknowledge the right of the Senate to decide that sort of a question for me.

The PRESIDING OFFICER. The Chair will state that under the rule this question must be decided after the conclusion of the roll call. Debate is now out of order.

Mr. ROOT. Mr. President, I ask leave to say one word with reference to the observations of the Senator from Texas.

The PRESIDING OFFICER. If there is no objection, the Senator from New York will proceed.

Mr. ROOT. Mr. President, I shall be quite content if the Senate determines to excuse the Senator from Idaho. I do not wish to permit the pairing of two Republican Senators——

Mr. BAILEY. Oh, but they are different kinds. [Laughter.]

Mr. ROOT. I do not wish the pairing of two Republican Senators, which has the effect of withdrawing two votes in opposition to the Democratic candidate to go sub silentio; and I make this objection in order that it shall be understood that the effect of this proceeding is to destroy two Republican votes and defeat the candidate of the Republican caucus and, if effective, to elect a Democratic President pro tempore of the Senate.

Mr. LA FOLLETTE. Mr. President——

The PRESIDING OFFICER. The Chair must reiterate that this debate is proceeding by unanimous consent. If there is no objection, the Chair will recognize the Senator from Wisconsin.

Mr. LA FOLLETTE. Mr. President, if the Senate shall determine to make the precedent which the Senator from New York [Mr. Root] seeks to raise here, it may take notice now that such a precedent will return many times to plague it hereafter.

I do not recognize, sir, the right of any Senator here, directly or indirectly, to make against me the criticism that I am voting against my party because that vote is against the action of members of this Senate regarding the public business in a secret meeting held in some place outside this Chamber. I deny the right of any secret caucus held outside of the Senate Chamber behind closed doors, with no reporters present, to dispose of the public business or anything which may exercise an important or controlling influence upon the public business.

I regard the election of a President pro tempore of this great body as of great importance in the conduct of its business. It is of tremendous importance at times, Mr. President, in determining what measures shall pass this body. I do not propose to be read out of the Republican Party because I can not conscientiously support some man whom a number of my party associates have agreed upon in a secret meeting as their choice for President pro tempore of the Senate.

The PRESIDING OFFICER. The Secretary will call the roll.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. It is the duty of the Chair to call the attention of the Senator to the stringency of the rule. The Chair has relaxed it.

"RULE XII.

"1. When the yeas and nays are ordered, the names of Senators shall be called alphabetically; and each Senator shall, without debate, declare his assent or dissent to the question, unless excused by the Senate; and no Senator shall be permitted to vote after the decision shall have been announced by the Presiding Officer, but may for sufficient reasons, with unanimous consent, change or withdraw his vote. No motion to suspend this rule shall be in order, nor shall the Presiding Officer entertain any request to suspend it by unanimous consent."

Mr. BAILEY. Mr. President, in view of the fact that everybody except the Senator immediately concerned has had a say, I think the Chair ought to read that rule after that Senator has finished.

The PRESIDING OFFICER. The Chair merely sought to do what he deemed it his duty to do—to call the attention of the Senate to the stringency of the rule.

Mr. BAILEY. The Chair is well within his right and his duty, but I think the rule ought to be read after the Senator from Idaho [Mr. Borah], whose right to be excused from voting is challenged, has been heard.

Mr. Borah and Mr. Heyburn addressed the Chair.

The PRESIDING OFFICER. The junior Senator from Idaho.

Mr. BORAH. Mr. President, I only want to say a word. This is the first time since I have been in the Senate that I have ever consented to pair at all, because I am not very much in favor of the practice or the principle. However, there were circumstances connected with this matter which I thought justified me in making this pair, and I regard it as purely a matter of conscience between the Senator from California [Mr. Works] and myself. I think the Senator from New York [Mr. Root] drifted aside from the question when he suggested that it was the result of an understanding or an effort by this process to do indirectly what we would not do directly—that is, to elect a member of the Democratic Party as President pro tempore of the Senate.

I cast my vote in accordance with what I believe to be the best interests of the organization of which I am an humble member, and I am not seeking in any way by this process to relieve myself of direct action. I am perfectly content in all matters which relate merely to the organization of my party to abide by the majority vote in caucus. If I am inside of the caucus I feel that I am competent to determine what I ought to do without the advice, aid, or suggestion of anyone else. The caucus having acted upon this matter, I was perfectly content to cast my vote for the caucus nominee, and my action was not taken with the design of embarrassing the party nor giving an advantage to the opposition party, but to accommodate a Senator who had to be absent and who could not avoid being absent. For that reason I consented to vote, as I have, by pair. It was purely to accommodate an absent Senator. I do not do business here or elsewhere by indirection.

Mr. SMOOT. Mr. President——

Mr. CULLOM. Regular order!

The PRESIDING OFFICER. The Senator from Utah.

Mr. SMOOT. Mr. President, if there is no objection, I should like to say just a word so that there will be no misunderstanding in relation to the statement in regard to the secret meeting. I think it ought to be understood that a Republican caucus was regularly called and there was not a member of the Republican Party but received notice to attend that caucus. That could only be called a secret meeting in the same way that the caucus of the Democratic Party or of any other party holding a meeting for the determination of questions of this sort.

The PRESIDING OFFICER. The Secretary will resume the calling of the roll.

The Secretary resumed the calling of the roll.

Mr. DIXON (when his name was called). I again announce my pair with the senior Senator from Iowa [Mr. Cummins].

Mr. HEYBURN. I object to the excuse of the Senator on that ground.

The PRESIDING OFFICER. The question will be decided after the roll call shall have been concluded.

Mr. HEYBURN. I think, Mr. President, the rule provides that when an objection is made the question shall be decided at the time by a vote without debate. I refer to Rule XII.

The PRESIDING OFFICER. The Senator from Montana [Mr. Dixon] has declined to vote on the call of his name and has assigned his reason, which is a pair. The question before the Senate is, Shall the Senator for the reason assigned by him be excused from voting? Those in favor of the motion——

Mr. CULBERSON. Mr. President, I call attention to paragraph 2 of Rule XII: "which shall be decided without debate; and these proceedings shall be had after the roll call and before the result is announced."

The PRESIDING OFFICER. That was the impression of the Chair. The Chair thinks the Senator from Texas [Mr. Culberson] is right. The Senator from Idaho [Mr. Heyburn] suggested that this question should be decided now, but the Chair thinks the Senator from Texas is correct, and that the question must be decided after the conclusion of the roll call. The Secretary will resume the calling of the roll.

The Secretary resumed the calling of the roll.

Mr. KENYON (when his name was called). I make the same announcement I have previously made as to my pair with the senior Senator from Oregon [Mr. Bourne].

Mr. MCCUMBER (when his name was called). I restate my previous announcement as to my pair, and withhold my vote.

Mr. HEYBURN. I object in that case to the withholding of the vote of the Senator.

Mr. PERKINS (when his name was called). I again announce my general pair with the junior Senator from North Carolina [Mr. Overman]. If he were present, he would vote for the Senator from Georgia [Mr. Bacon], and if I were at liberty to vote I should vote for the Senator from New Hampshire [Mr. Gallinger].

The roll call was concluded.

Mr. HEYBURN. Now, Mr. President, before the vote is announced, the question is——

The PRESIDING OFFICER. The Chair was about to put that question. Objection having been made to two Senators withholding their votes—the Senator from Montana [Mr. Dixon] and the Senator from North Dakota [Mr. McCumber]—under the rule of the Senate each of those Senators is entitled to assign his reasons for declining to vote, and, having assigned them, it becomes the duty of the Chair to put the question to the Senate, which shall be decided without debate.

Mr. BAILEY. Mr. President, I submit as a point of order, that the question of pairs is not within either the spirit or the letter of that rule, and that the rule does not apply to the case where a Senator announces his pair.

The PRESIDING OFFICER. The Chair is of opinion that pairs are not recognized by the rules anywhere, and that they are only a reason for not voting.

Mr. BAILEY. But, Mr. President, while not recognized by the rules, they are recognized by the uniform practice of the Senate and become as much a part of the rules as if they were expressly written in them.

Now, Mr. President, I want to make just this suggestion: If it is within the power of the majority present in the Chamber to compel a Senator to vote notwithstanding his pair, then, if you succeed in electing a President pro tempore—which looks very doubtful now, as we are enjoying the novel and delightful sensation of seeing a Democratic candidate run ahead in the Senate—but if you

should succeed in electing a President pro tempore, when we found you down at lunch the day after to-morrow, we could depose him and elect one of our own. We could pass the word about the Senate Chamber on the Democratic side for them all to remain here, and we could then release all of our Senators who announced their pairs and compel them to vote, and, having a majority, we could refuse to release the Senators on the other side.

The purpose of a pair is not wholly to serve the convenience of Senators. It is broader and more important than that. It was to preserve that relation between the parties which the people had established by their elections; it was to provide against a contingency where a larger number of the majority party happen to be sick or absent, whether engaged upon their personal affairs or public business—under such circumstances they still might seek and obtain pairs with the minority and thus preserve the right of the majority to control the proceedings of the Senate.

Mr. HEYBURN. Mr. President, I interpose a question of order. I believe under the rule that no option is given with reference to debate, and the rule says that we must first vote upon this, and that other proceedings may follow the vote.

Mr. BAILEY. I understand that, and I think, Mr. President, on the question itself, as to the sufficiency of the reason, debate would be precluded; but I am not raising the question as to the sufficiency of the reason, I am raising the question that, under the practice of the Senate, the sufficiency of the reason is not a matter for the Senate's determination, and I submit that point. If it were that a Senator would say, "I am interested" or "I am not qualified," or should assign any other reason for not voting, which the Senate could determine for itself, then the rule would apply; but my contention is that the pair having been recognized immemorially in the Senate, until it has become a part of the Senate's procedure, is a matter for each Senator's own conscience and not for the Senate to determine.

Let me make this one suggestion, and then I will yield the floor. Suppose a Senator, despite his pair, should vote and announce to the Senate and to the world that he voted because he found that his single vote would be decisive of the question, will any Senator contend that we would have the power to reject that vote? No, sir. The rules of the Senate leave it to each Senator, and if it be left to the Senator in one instance, when he seeks to violate his faith to a fellow Senator, it must be left to him in the other instance to keep that faith. The very reason that our rules are silent with reference to pairs is that it was expected and intended to leave that question to Senators to decide for themselves.

Mr. HEYBURN. Mr. President, I understood that I had the recognition of the Chair, and I desire——

The PRESIDING OFFICER. The Senator from Texas [Mr. Bailey] rose to a point of order.

Mr. HEYBURN. Well, I had risen to a point of order.

The PRESIDING OFFICER. The Chair understood that the Senator's proposition was to proceed under the rule, and the Senator from Texas has raised a point of order.

Mr. HEYBURN. I do not desire to interfere with the Senator holding the floor——

Mr. BAILEY. Mr. President, the Senator from Nebraska [Mr. Hitchcock] has called my attention to an instance where it was expressly decided on June 20, 1860—and, of course, the rules no more recognized the pair then than they do now—that a Senator may refuse to answer to his name when called to vote when he is paired with another Senator. There is also another decision on that same question, and, as I understand, to the same effect.

I should dislike more than I can express to see the Senate of the United States assume the power to determine for one of its Members whether he would keep his promise to a brother and absent Senator. I would not heedlessly defy the Senate, but I say, without one moment's hesitation, that should the Senate order me to vote contrary to my pair I would refuse to obey its order, even if my refusal provoked my expulsion, for no majority can determine for an honorable man whether he will keep his word.

Mr. HEYBURN. Mr. President, I do not know whether the Senate has finished the consideration of the point of order.

The PRESIDING OFFICER. The Senator from Texas, as the Chair understands, has raised a point of order.

Mr. HEYBURN. I was on the floor, and had been recognized when he raised the point of order.

The PRESIDING OFFICER. Certainly. The Senator from Texas raised a point of order, which amounts to saying that an objection can not be made to a Senator withholding his vote when he is paired, and that the proceedings under paragraph 2 of Rule XII can not take place.

Mr. BAILEY. They are not applicable.

The PRESIDING OFFICER. And that they are not applicable—the Chair will rule on that point at the proper time, but is ready to hear discussion, of course.

Mr. MCCUMBER. Mr. President, I desire to make a parliamentary inquiry, which is whether at this time any Senator can give any additional reason for withholding his vote other than the statement of the pair before the question is passed upon. It seems to me that he can, and I wish to say a word upon that point.

Mr. HEYBURN. Mr. President, I yield the floor.

The PRESIDING OFFICER. In the opinion of the Chair a Senator can state his reasons in any way he pleases.

Mr. MCCUMBER. The object of the pair is to balance the strength of the political parties upon anything that is made a political question; and even though it were in the power of the Senate to compel a Senator to vote upon the question, any Senator who has a pair with a Senator on the opposite side on a question of this kind would be compelled, in order to maintain the balance between the parties, to vote, not for his choice, but to vote for someone else; and if my pair, who would vote for the Senator from Georgia [Mr. Bacon], were not present, and could not vote for him, and I should be compelled to vote, I would not vote for the choice of my own caucus nominee. But in order to maintain that balance I should vote for some other Republican. So nothing would be gained by it; and I would give that as another reason for maintaining my pair.

Mr. CULLOM. I move that when the Senate adjourns to-day it be to meet on Monday next.

Mr. BACON. We can not hear, Mr. President.

Mr. CULLOM. Mr. President——

Mr. CULBERSON. I rise to a question of order.

The PRESIDING OFFICER. So much has intervened that the Chair overlooked the fact that the result of the roll call had not been announced, and nothing is in order except the determination of the objection raised against two Senators who declined to vote. The Senator from North Dakota [Mr McCumber] has stated his reasons. The Senator from Montana [Mr. Dixon] has stated his. On the point of order raised by the Senator from Texas [Mr. Bailey] the Chair is unable, although he agrees entirely with the Senator from Texas as to the usage and as to the character of a pair, to see that under the rule a pair has any existence except as a reason for not voting, and therefore the Chair puts the question: Shall the Senator from Montana, for the reasons asigned by him, be excused from voting? [Putting the question.] The ayes have it, and the Senator from Montana is excused from voting.

The Chair will put the same question as to the Senator from North Dakota, if it is desired. Shall the Senator from North Dakota be excused from voting for the reasons assigned? [Putting the question.] The ayes have it, and the Senator from North Dakota is excused.

The Secretary will announce——

Mr. HEYBURN. Mr. President——

The PRESIDING OFFICER. The Secretary will announce the result.

Mr. HEYBURN. Well, Mr. President——

The PRESIDING OFFICER. The rule says "any further proceedings in reference thereto shall be after such announcement."

The PRESIDING OFFICER. Seventy-four Senators have voted; necessary to a choice, 38. The Senator from Georgia [Mr. Bacon] has 35; the Senator from New Hampshire [Mr. Gallinger], 32; the Senator from Minnesota [Mr. Clapp], 4; the Senator from Massachusetts [Mr. Lodge], 1; the Senator from South Carolina [Mr. Tillman], 1; and the Senator from Kansas [Mr. Bristow], 1.

Mr. HEYBURN. Mr. President, under no circumstances would I assert or support any position that contemplated any Member of this House or any man violating a contract within the terms of the contract that he had made. This is not the first time during my service here that this question has been before the Senate. At one time there was a very deep feeling—how deep I can not say at this time—because of certain remarks that I made in the Senate. About that time a question was coming on for a vote. The usual procedure was taken. The Assistant Doorkeeper on this side applied to probably the Assistant Door-

keeper or whoever has charge of the pairs on the other side, and a pair was refused me because of having made that speech, and then I objected to the pairs, and the Senate sustained me.

Now, I have been giving some attention to this rule. Every man who makes a pair makes it subject to two conditions—first, he makes it subject to the conditions of maintaining a quorum in the body. The Chair may order a pair broken to make a quorum. Again, a Member makes it subject to the will of the Senate as to whether or not public business shall be suspended because of all of the Senators or enough of them being paired to defeat the transaction of public business. Now, those are conditions that are just as much a part of a pair as though they had been written upon the face of an instrument.

I raised this objection to-day because it is evident that there is a cabal here that intends to defeat the performance of a public duty by the Senate. It has been boasted here that there are but two parties in the Senate. Men have stood upon the floor here recently and frequently asserted that they belonged to this or that party, regardless of their vote. In all legislative bodies in this country, of whatever political faith, the caucus is the meeting of the members of one or the other of the parties for the purpose of determining the course of that party upon political questions, and when you talk of a question of honor, there is the pressure of honor upon every man who claims to belong to the party which has held the caucus on political questions. His denial of it lessens it not one whit. His staying out of the caucus is staying out of the party. Whenever you break down those rules you have broken down all that may possibly maintain a party organization.

I did not object to the pair of either the Senator from North Dakota or the Senator from Montana for any personal reasons. I divided the honors. One of them was paired with a Democrat and one of them with somebody else. [Laughter.]

I do not propose to shirk this question. It is a delicate one, and far from a pleasant question to raise. But if a man is going to belong to a party and stand with its organization, he must be governed by the rules of a majority of that party when they meet for the purpose—the express and avowed purpose—of determining what that policy shall be. A casual meeting, a poll of men, would not bind him, but if he is not bound by that caucus, he is not a member of the party that holds it. We may just as well be a little bit candid about this question. I raised it because, if we are going to transact public business, we must have the action of every Senator who is present; and it does not involve the question suggested by the Senator from Texas as to the honor, because the yielding of the pair is qualified, when the pair is agreed upon, by those two provisions, one of them frequently exercised, the other less frequently. Conditions such as exist here to-day do not in the providence of God often exist.

Mr. President, I say that much in support of my action in challenging these pairs. Having had a previous experience here as to the quality, character, and efficiency of a pair, I felt that this was a proper occasion to illustrate the fact that pairs are not always regarded as a matter of right or of sacred character.

Mr. CULLOM. I move that when the Senate adjourns to-day it be to meet on Monday next.

Mr. DAVIS. Mr. President——

Mr. GALLINGER. The motion is not debatable.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Illinois that when the Senate adjourns to-day it adjourn to meet on Monday next. [Putting the question.] The ayes appear to have it.

Mr. CULBERSON. I ask the Chair to call for the negative votes.

The PRESIDING OFFICER. The Chair thought he had done so.

Mr. CULBERSON. Not very distinctly, I think.

The PRESIDING OFFICER (again putting the question). The ayes appear to have it.

Mr. CULBERSON. I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. SMITH of South Carolina (when his name was called). Has the junior Senator from Delaware [Mr. Richardson] voted?

The PRESIDING OFFICER. The Chair is informed that he has not voted.

Mr. SMITH of South Carolina. Then with great fear and trepidation I announce that I have a general pair with him, and withhold my vote. I hope it will not precipitate discussion.

The roll call was concluded.

Mr. PERKINS (after having voted in the affirmative). I desire to withdraw my vote because of my pair with the junior Senator from North Carolina [Mr. Overman].

The result was announced—yeas 35, nays 42.

So Mr. Cullom's motion was rejected.

Mr. DIXON. I now renew my motion that the Senate do now adjourn.

The motion was not agreed to.

The PRESIDING OFFICER. The Senate will proceed to take another ballot for President pro tempore.

The Secretary proceeded to call the roll.

Mr. BORAH (when his name was called). I again announce my pair with the junior Senator from California [Mr. Works]. If he were present, I would vote for Senator Gallinger and he would vote for Senator Clapp.

Mr. DIXON (when his name was called). I again announce my pair with the senior Senator from Iowa [Mr. Cummins]. If he were present, I would vote for Senator Gallinger.

Mr. KENYON (when his name was called). I announce the same pair as on the former ballot.

Mr. MCCUMBER (when his name was called). I transfer my pair with the senior Senator from Mississippi [Mr. Percy] to the junior Senator from Delaware [Mr. Richardson] and vote for Mr. Gallinger.

Mr. PERKINS (when his name was called). I again announce my pair with the junior Senator from North Carolina [Mr. Overman]. If he were present, he would vote for Senator Bacon and I would vote for Senator Gallinger.

Mr. SMITH of South Carolina (when his name was called). I transfer my pair with the junior Senator from Delaware [Mr. Richardson] to the senior Senator from Mississippi [Mr. Percy] and vote. I vote for Mr. Bacon.

The roll call was concluded.

Mr. JOHNSTON of Alabama. I wish to state that my colleague [Mr. Bankhead] on all these votes for President pro tempore stands paired with the senior Senator from Maine [Mr. Frye].

The PRESIDING OFFICER. Seventy-four Senators have voted; necessary to a choice, 38. The Senator from Georgia [Mr. Bacon] has received 35 votes; the Senator from New Hampshire [Mr. Gallinger] has received 32 votes; the Senator from Minnesota [Mr. Clapp] has received 4 votes; the Senator from Massachusetts [Mr. Lodge], 1; the Senator from South Carolina [Mr. Tillman], 1; and the Senator from Kansas [Mr. Bristow], 1.

Mr. STONE. A parliamentary inquiry, Mr. President. Did I understand the Chair to rule that under the Constitution of the United States a President pro tempore could not be elected by a plurality vote?

The PRESIDING OFFICER. The Chair is very clearly of opinion that under the Constitution of the United States, in the absence of any provision to the contrary, all officers of both Houses must be elected by a majority; and in the practice of the House, where there have been contests very frequently, a majority vote has been and is required.

Mr. STONE. I wish to ask another question, Mr. President. It is whether at this point, the hour of 4 o'clock having arrived, it is proper, notwithstanding the pending business, to lay the unfinished business before the Senate.

The PRESIDING OFFICER. The Chair is inclined to believe that the matter in which the Senate is engaged is a privileged matter and, being engaged in a roll call, it could not be interrupted even by the unfinished business.

Mr. CULBERSON. Mr. President, the Constitution of the United States, I beg leave to say in opposition to the announcement of the Chair a moment ago, contains no provision with reference to the vote by which a President pro tempore of the Senate may be elected. If the Chair would kindly cite me to a provision of the Constitution of the United States to that effect, I would be glad to see it.

The PRESIDING OFFICER. The Chair is aware that there is no provision in the Constitution of the United States in so many words requiring a majority vote for the election of a President pro tempore, neither is there a provision requiring it for a Speaker of the House. It makes the same provision for the officers of both Houses, and in the opinion of the Chair it is the contemplation of the Constitution that a majority should be required for the election of all officers.

Mr. CULBERSON. The Constitution of the United States expressly provides that each House of Congress, the Senate and the House of Representatives, may make rules for their government, but there is nothing in the Constitution nor in the rules of the Senate that provides by what vote the President pro tempore shall be elected.

Jefferson's Manual, which, while it is argumentative and persuasive, is not a part of the rules of the Senate, at page 134 of the manual, if the Chair desires to examine it, recites that in the absence of anything to the contrary the majority rule shall prevail. As there is nothing in the rules of the Senate proper or in the Constitution of the United States which declares by what vote officers of the Senate shall be elected, either a President pro tempore or any other officer of the Senate, I give it as my opinion for whatever it may be worth that it is within the province of the Senate at this time to determine by what vote a President pro tempore shall be eleced.

I merely make that statement because I did not want the statement of the Chair to go unchallenged, at least to the extent of my dissent from it.

Mr. BAILEY. Mr. President, supplementing what my colleague has said, I agree with the Chair that the same rule applies to the election of a President pro tempore of the Senate that applies to the election of a Speaker of the House; and unless I am mistaken it has been expressly decided that the House may choose a Speaker by a plurality vote. Without being positive, I venture to say that the youngest man ever elected Speaker of the House, Hon. Howell Cobb, of Georgia, was elected by a plurality vote.

Mr. HEYBURN. Mr. President, we have adopted Jefferson's Manual as a part of the rules of this body. It is provided at page 134 of the Senate Manual:

"The voice of the majority decides."

If any Senator will turn to that page——

Mr. BAILEY. Nobody questions that, in the absence of the rule——

Mr. HEYBURN. There is no absence.

Mr. BAILEY. The Senate could adopt a rule at this moment to choose the President pro tempore by a plurality vote.

Mr. HEYBURN. But that exception is not in the rule.

Mr. CULBERSON. I call the attention of the Senate to Jefferson's Manual, at page 134, from which the Senator from Idaho reads, but I do not believe the Senate has ever even adopted that or Jefferson's Manual as a part of the rules of the Senate.

Mr. HEYBURN. The Senator will admit that Jefferson's Manual provides specifically, without any exceptions or provisos, that the voice of the majority decides. There is no proviso in that section; there is no alternative.

Mr. BAILEY. It simply states a general rule, which may be modified at the pleasure of the Senate.

Mr. CULBERSON. Unless otherwise provided.

Mr. HEYBURN. It states a rule which we have adopted. We have adopted it, and unless some motion is made——

Mr. BAILEY. How, when, and where did we adopt the majority rule? I understand the Chair has held, and I think properly, that in the absence of any provision to the contrary it requires a majority vote to elect; but I have no doubt that it is within our power to supersede that requirement and provide that a President pro tempore may be chosen by a plurality.

Mr. HEYBURN. Mr. President, the affirmative is the other way. There is no alternative or conditional provision attached to this requirement, and it being a part of the rules of this body we can not amend our rules on the floor, because we have provided the manner in which the rules may be amended.

Mr. STONE. Mr. President, I make the point for the decision of the Chair that we have been proceeding here for two weeks, it may be more, with the business of the Senate without a President pro tempore, the Senator from Maine [Mr. Frye] having resigned from that office. His resignation was laid before the Senate, and it was peremptory. We have been transacting business.

My friend from Texas [Mr. Bailey] says to me, aside, that we elect a President pro tempore, and the necessity for electing one arises only in the absence of the Vice President; but Mr. President, we have gone on here, I know, in the transaction of the business of the Senate in the absence of the Vice President. Since the resignation of the Senator from Maine was laid before the Senate I have seen, and you have seen, other Senators occupying the chair and called to the chair by the Vice President, either personally or by a written request that he would take the chair.

Now, sir, is it to be said that the entire business of this session is to be locked up and that nothing can be done until a President pro tempore is chosen? The contest that has developed here to-day might run on indefinitely for weeks and months. I put it to the Chair whether it is not within the province of the Vice President, following the precedent already set and the practice of the Senate already observed, to call a Senator to the chair as he called the Senator from Massachusetts, who now occupies the chair, to that position, and

that we can go on with the business of the Senate; hence, that it is the duty of the Chair to lay before the Senate the unfinished business, which is the joint resolution amending the Constitution for the direct election of Senators by the people.

I do not believe that that important measure or any other important measure ought to be indefinitely delayed by a contest of this kind, which may be protracted for months and perhaps through the whole Congress. I ask the Chair to rule whether it is not the province and duty of the Chair to lay the unfinished business before the Senate.

Mr. HEYBURN. Mr. President, does not the rule that we may take up nothing while a vote is pending apply until this question is laid aside by the Senate? Are we not now, in legislative contemplation, engaged in voting upon this question until we have either determined it or it has been lain aside? I think that interpretation is borne out by the rule, and that it is not in order to interrupt the voting upon this question. We may lay it aside, then we are at liberty to take up another matter, but I think until we do lay it aside that we must continue with it. I ask that the regular business be proceeded with.

The PRESIDING OFFICER. The Chair will say that what the Chair understood to be the point of order was raised on the question of a majority vote and also on the question of the unfinished business.

The Chair will restate his position on the unfinished business. The Chair is inclined to think that this business now before the Senate is privileged, but there can be no doubt that the Senate is engaged in voting. The Chair does not think that can be interrupted by the unfinished business or in any other way except by the Senate laying aside the business before it or by adjourning or going into executive session. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. BORAH (when his name was called). I make the same announcement that I have heretofore made.

Mr. MCCUMBER (when his name was called). I again announce my pair, and transfer the same to the junior Senator from Delaware [Mr. Richardson], and vote. I vote for the Senator from New Hampshire [Mr. Gallinger].

Mr. PERKINS (when his name was called). I again announce my pair with the senior Senator from North Carolina [Mr. Overman].

Mr. SMITH of South Carolina (when his name was called). I again announce my pair with the junior Senator from Delaware [Mr. Richardson], and the transfer of that pair to the senior Senator from Mississippi [Mr. Percy], so I will vote. I vote for the Senator from Georgia [Mr. Bacon].

The roll call having been concluded, it resulted as follows:

The PRESIDING OFFICER. Seventy-four Senators have voted; 38 votes are necessary to a choice. The Senator from Georgia [Mr. Bacon] has received 35 votes; the Senator from New Hampshire [Mr. Gallinger], 32; the Senator from Minnesota [Mr. Clapp], 4; the Senator from Massachusetts [Mr. Lodge], 1; the Senator from South Carolina [Mr. Tillman], 1; the Senator from Kansas [Mr. Bristow], 1; and there has been no choice.

The Chair desires to call the attention of the Senator from Missouri [Mr. Stone] to another point in regard to the unfinished business. This point has been brought to the attention of the Chair by the chairman of the Judiciary Committee, the Senator from Wyoming [Mr. Clark]. The present Presiding Officer is occupying his position by the action of the Senate in suspending by unanimous consent clause 2 of Rule I. He therefore is occupying the place which the rules design for the occupancy at this time of the Secretary of the Senate. It is perfectly obvious that the Secretary of the Senate, if now presiding over the proceedings of the Senate, could not carry on other business, for the rule explicitly says he is to preside only "pending the election of a President pro tempore." Therefore, as the Chair is occupying the position of the Secretary of the Senate and is not President pro tempore or holding the place by virtue of the appointment of the Vice President, it seems to him perfectly clear that during his occupancy of the chair no business is in order except that of choosing a President pro tempore.

The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. BORAH (when his name was called). I again announce my pair with the Senator from California [Mr. Works].

Mr. MCCUMBER (when his name was called). As previously stated, I am paired with the Senator from Mississippi [Mr. Percy]. I transfer that pair, as on the previous vote, to the Senator from Delaware [Mr. Richardson] and vote. I vote for the Senator from New Hampshire [Mr. Gallinger].

Mr. PERKINS (when his name was called). I again announce my general pair with the junior Senator from North Carolina [Mr. Overman].

Mr. SMITH of South Carolina (when his name was called). Under the arrangement stated by the Senator from North Dakota [Mr. McCumber], the junior Senator from Delaware [Mr. Richardson], with whom I am paired, stands paired with the senior Senator from Mississippi [Mr. Percy], which leaves me at liberty to vote. I vote for the Senator from Georgia [Mr. Bacon].

Mr. TAYLOR (when his name was called). I am paired with the junior Senator from Kentucky [Mr. Bradley], who was compelled to leave the Senate on account of illness.

The roll call having been concluded,

The PRESIDING OFFICER. Seventy-two Senators have voted; 37 are necessary for a choice. The Senator from Georgia [Mr. Bacon] has 34 votes; the Senator from New Hampshire [Mr. Gallinger] 31; the Senator from Minnesota [Mr. Clapp] 4; the Senator from Kansas [Mr. Bristow] 1; the Senator from Massachusetts [Mr. Lodge] 1; and the Senator from South Carolina [Mr. Tillman] 1. There is no choice. The Secretary will again call the roll.

ADJOURNMENT TO MONDAY (JOURNAL ENTRY, P. 62).

On motion by Mr. La Follette, that the Senate adjourn to Monday next,

Mr. Heyburn raised two questions of order, viz, first, that presumably the Secretary of the Senate is in the chair and that he can not pass upon or submit a motion; and, second, that the two motions can not be consolidated; that the Senate must first lay aside the business in which it is engaged—the question of the election of a President pro tempore—before it can do any legislative business whatever.

The Presiding Officer overruled the question of order, and decided that it is within the power of the present Presiding Officer to put a motion to adjourn, in order to end the proceedings, provided an election of President pro tempore has not been effected, and as to the second branch there is no question but what the Senate can adjourn to a day certain, as it is the second privileged motion.

The question being on the motion to adjourn to Monday next,

The motion was agreed to; and at 4 o'clock and 43 minutes p. m.,

The Senate adjourned.

ADJOURNMENT TO MONDAY (CONGRESSIONAL RECORD, P. 1189).

Mr. LA FOLLETTE. Mr. President, I move that the Senate adjourn to meet on Monday next at 2 o'clock.

The PRESIDING OFFICER. The Senator from Wisconsin moves that the Senate adjourn until Monday next at 2 o'clock.

Mr. HEYBURN. Mr. President, I rise to two points of order. First, presumably the Secretary of the Senate is in the Chair, and he can not pass upon or submit a motion. He is not a legislative officer; second, the two motions can not be consolidated. There must first be a motion that when we adjourn, it be to the time named, and that must be separate and distinct from the motion to adjourn. I think we must first lay aside the business in which the Senate is now engaged, the question of the election of a President pro tempore, before we can do any legislative business whatever.

The PRESIDING OFFICER. The Chair is obliged to overrule both points of order. The Chair thinks it is perfectly clear that if the Secretary of the Senate were holding the place which the present Presiding Officer now holds, it would be within his power to put a motion to adjourn, otherwise it would never be possible to bring the proceedings to an end. He must be able to put some motion in order to end the proceedings, provided an election of President pro tempore has not been effected.

As to the second point, there is no sort of question—in fact, it is the second privileged motion—that the Senate can adjourn to a day certain.

Mr. HEYBURN. Mr. President, if I may be pardoned for being a little insistent, I think that the orderly proceeding would be, first, that a motion should be acted upon laying aside the special order, the proceedings under which are only conducted with some one else than a Member of this body in the chair. It is entirely convenient to proceed in that way, and we can not make the Senator from Massachusetts the Secretary of the Senate by unanimous consent or otherwise.

The PRESIDING OFFICER. The Chair is of opinion that he has been placed in his present position by the unanimous vote of the Senate. He is also clear that a motion to adjourn is always in order, and he therefore puts the motion of the Senator from Wisconsin, which is that the Senate adjourn until Monday next at 2 o'clock. The question is on that motion.

The motion was agreed to; and (at 4 o'clock and 43 minutes p. m.) the Senate adjourned until Monday, May 15, 1911, at 2 o'clock p. m.

Monday, May 15, 1911 (Journal, p. 65).

ELECTION OF A PRESIDENT OF THE SENATE PRO TEMPORE.

On motion by Mr. Cullom, that the Senate proceed to the election of a President of the Senate pro tempore,

The motion was agreed to, and

On motion by Mr. Shively, and by unanimous consent,

Ordered, That clause 2 of Rule I of the standing rules of the Senate be suspended, and that the present occupant of the chair preside during the proceedings connected with the election of a President of the Senate pro tempore.

Whereupon,

The Presiding Officer (Mr. Lodge in the chair) directed the roll to be called;

When,

The whole number of votes was found to be 76, of which 39 make a majority. Mr. Gallinger had 33, Mr. Bacon had 33, Mr. Clapp had 7, Mr. Tillman had 1, Mr. Bristow had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Borah, Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, Dixon, du Pont, Gamble, Heyburn, Jones, Kenyon, Lippitt, McLean, Nelson, Nixon, Oliver, Page, Penrose, Perkins, Richardson, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bankhead, Bryan, Chamberlain, Chilton, Culberson, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of Alabama, Kern, Lea, Martine of New Jersey, Myers, Newlands, O'Gorman, Overman, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Crawford, Cummins, Gronna, La Follette, Poindexter, and Works.

Mr. Bacon voted for Mr. Tillman.

Mr. Clapp voted for Mr. Bristow.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice.

Whereupon,

The Presiding Officer directed the roll to be called;

When,

The whole number of votes was found to be 76, of which 39 make a majority. Mr. Gallinger had 33, Mr. Bacon had 33, Mr. Clapp had 7, Mr. Tillman had 1, Mr. Bristow had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Borah, Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, Dixon, du Pont, Gamble, Heyburn, Jones, Kenyon, Lippitt, McLean, Nelson, Nixon, Oliver, Page, Penrose, Perkins, Richardson, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bankhead, Bryan, Chamberlain, Chilton, Culberson, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of Alabama, Kern, Lea, Martine of New Jersey, Myers, Newlands, O'Gorman, Overman, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Crawford, Cummins, Gronna, La Follette, Poindexter, and Works.

Mr. Bacon voted for Mr. Tillman.

Mr. Clapp voted for Mr. Bristow.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice.

Proceedings in the Congressional Record, page 1204, as follows:

The PRESIDING OFFICER. The Senate will proceed to the election of a President pro tempore.

The Chair desires to say, before action is taken, that on Thursday last the Senate, by unanimous consent, suspended clause 2 of Rule I, which provides that the Secretary shall take the chair pending the election of a President pro tempore, and continued in the chair its present occupant. Whether that action was intended to be continuous, covering all proceedings connected with the election of a President pro tempore, or was for that day only, it is not for the Chair to determine. It is for the Senate to determine that question before we proceed further.

Mr. SHIVELY. I ask unanimous consent that clause 2 of Rule I be suspended and that the senior Senator from Massachusetts [Mr. Lodge] occupy the chair during the proceedings to elect a President pro tempore.

The PRESIDING OFFICER. The Senator from Indiana moves that the present occupant of the chair continue to occupy it during the proceedings——

Mr. SHIVELY. If the Chair please, I made no motion. I asked unanimous consent.

The PRESIDING OFFICER. The Senator from Indiana asks unanimous consent that clause 2 of Rule I be suspended, and that the present occupant of the chair continue to occupy it during the proceedings connected with the election of a President pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Tuesday, May 16, 1911 (Journal, p. 67).

ELECTION OF PRESIDENT PRO TEMPORE.

On motion by Mr. Culberson,

Ordered, That Senate Report No. 3, Forty-fourth Congress, being the report of Mr. Morton from the Committee on Privileges and Elections under date of January 6, 1876, relating to the tenure of office of the President pro tempore of the Senate; also the proceedings of the Senate of March 12, 1890, on the subject of the resolution reported from the Committee on Privileges and Elections relating

to the election of a President of the Senate pro tempore, be printed as one document.

* * * * * * *

ELECTION OF A PRESIDENT OF THE SENATE PRO TEMPORE.

On motion by Mr. Cullom, that the Senate proceed to the election of a President of the Senate pro tempore,

The motion was agreed to;

Whereupon,

The Presiding Officer assumed the chair and directed the roll to be called;

When,

The whole number of votes was found to be 68, of which 35 make a majority. Mr. Gallinger had 29, Mr. Bacon had 30, Mr. Clapp had 7, Mr. Tillman had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, du Pont, Gamble, Heyburn, Jones, Kenyon, Lippitt, McLean, Nelson, Oliver, Page, Penrose, Perkins, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bankhead, Bryan, Chamberlain, Culberson, Fletcher, Foster, Gore, Hitchcock, Johnston of Alabama, Kern, Lea, Martine of New Jersey, Myers, Newlands, O'Gorman, Overman, Rayner, Reed, Shively, Simmons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Crawford, Cummins, Gronna, La Follette, Poindexter, and Works.

Mr. Bacon voted for Mr. Tillman.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice;

Whereupon,

The Presiding Officer directed the roll to be called;

When,

The whole number of votes was found to be 69, of which 35 make a majority. Mr. Gallinger had 29, Mr. Bacon had 31, Mr. Clapp had 7, Mr. Tillman had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Crane, Cullom, Curtis, Dillingham, du Pont, Gamble, Heyburn, Jones, Kenyon, Lippitt, McLean, Nelson, Oliver, Page, Penrose, Perkins, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Bankhead, Bryan, Chamberlain, Culberson, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of of Alabama, Kern, Lea, Martine of New Jersey, Myers, Newlands, O'Gorman, Overman, Rayner, Reed, Shively, Simons, Smith of Maryland, Smith of South Carolina, Stone, Swanson, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,
Messrs. Bristow, Crawford, Cummins, Gronna, La Follette, Poindexter, and Works.
Mr. Bacon voted for Mr. Tillman.
Mr. Gallinger voted for Mr. Lodge.
There was consequently no choice.

Wednesday, May 17, 1911 (Journal, p. 70).

ELECTION OF A PRESIDENT OF THE SENATE PRO TEMPORE.

On motion by Mr. Heyburn, that the Senate proceed to the election of a President of the Senate, pro tempore,
The motion was agreed to;
Whereupon,
The Presiding Officer assumed the chair and directed the roll to be called;
When,
The whole number of votes was found to be 71, of which 36 make a majority. Mr. Gallinger had 30, Mr. Bacon had 32, Mr. Clapp had 7, Mr. Tillman had 1, and Mr. Lodge had 1.
Those who voted for Mr. Gallinger are,
Messrs. Bradley, Brandegee, Brown, Burnham, Burton, Clark of Wyoming, Crane, Curtis, Dillingham, Dixon, du Pont, Heyburn, Jones, Lippitt, Lodge, McCumber, McLean, Nelson, Nixon, Oliver, Page, Penrose, Perkins, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.
Those who voted for Mr. Bacon are,
Messrs. Bailey, Bankhead, Bryan, Chamberlain, Clarke of Arkansas, Culberson, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine, Johnston of Alabama, Kern, Lea, Martin of Virginia, Martine of New Jersey, Myers, Newlands, O'Gorman, Overman, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Stone, Swanson, Taylor, Terrell, Thornton, and Williams.
Those who voted for Mr. Clapp are,
Messrs. Bristow, Crawford, Cummins, Gronna, La Follette, Poindexter, and Works.
Mr. Bacon voted for Mr. Tillman.
Mr. Gallinger voted for Mr. Lodge.
There was consequently no choice.
Whereupon,
The Presiding Officer directed the roll to be called,
When,
The whole number of votes was found to be 70, of which 36 make a majority. Mr. Gallinger had 29, Mr. Bacon had 32, Mr. Clapp had 7, Mr. Tillman had 1, and Mr. Lodge had 1.
Those who voted for Mr. Gallinger are,
Messrs. Bradley, Brandegee, Brown, Burnham, Burton, Clark of Wyoming, Crane, Curtis, Dillingham, du Pont, Heyburn, Jones, Lippitt, Lodge, McCumber, McLean, Nelson, Nixon, Oliver, Page, Penrose, Perkins, Root, Smith of Michigan, Smoot, Sutherland, Townsend, Warren, and Wetmore.
Those who voted for Mr. Bacon are,
Messrs. Bailey, Bankhead, Bryan, Chamberlain, Clarke of Arkansas, Culberson, Fletcher, Foster, Gore, Hitchcock, Johnson of Maine,

Johnston of Alabama, Kern, Lea, Martin of Virginia, Martine of New Jersey, Myers, Newlands, O'Gorman, Overman, Pomerene, Rayner, Reed, Shively, Simmons, Smith of Maryland, Stone, Swanson, Taylor, Terrell, Thornton, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bristow, Crawford, Cummins, Gronna, La Follette, Poindexter, and Works.

Mr. Bacon voted for Mr. Tillman.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice.

Monday, June 5, 1911 (Journal, p. 85).

VICE PRESIDENT ABSENT—PRESIDENT PRO TEMPORE.

The Vice President being absent, the Secretary called the Senate to order.

Mr. Lodge raised a question as to the presence of a quorum;

Whereupon,

The Secretary directed the roll to be called;

When,

Fifty-seven Senators answered to their names,

A quorum being present.

The Senate proceeded to the election of a President of the Senate pro tempore;

Whereupon,

The Secretary directed the roll to be called;

When,

The whole number of votes was found to be 63, of which 32 make a majority. Mr. Gallinger had 27, Mr. Bacon had 25, Mr. Clapp had 8, Mr. Tillman had 1, Mr. Bristow had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Cullom, Curtis, Dixon, Gamble, Heyburn, Jones, Lodge, McCumber, McLean, Nelson, Nixon, Oliver, Page, Penrose, Root, Smith of Michigan, Smoot, Stephenson, Sutherland, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Chamberlain, Chilton, Culberson, Davis, Fletcher, Foster, Gore, Hitchcock, Johnston of Alabama, Lea, Martin of Virginia, Martine of New Jersey, Myers, Newlands, Pomerene, Rayner, Simmons, Smith of South Carolina, Stone, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bourne, Bristow, Crawford, Cummins, Gronna, La Follette, Poindexter, and Works.

Mr. Bacon voted for Mr. Tillman.

Mr. Clapp voted for Mr. Bristow.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice.

Whereupon,

The Secretary directed the roll to be called,

When,

The whole number of votes was found to be 64, of which 33 make a majority. Mr. Gallinger had 27, Mr. Bacon had 26, Mr. Clapp had 8, Mr. Tillman had 1, Mr. Bristow had 1, and Mr. Lodge had 1.

Those who voted for Mr. Gallinger are,

Messrs. Bradley, Brandegee, Briggs, Burnham, Burton, Clark of Wyoming, Cullom, Curtis, Dixon, Gamble, Heyburn, Jones, Lodge, McCumber, McLean, Nelson, Nixon, Oliver, Page, Penrose, Root, Smith of Michigan, Smoot, Stephenson, Sutherland, Warren, and Wetmore.

Those who voted for Mr. Bacon are,

Messrs. Bailey, Chamberlain, Chilton, Culberson, Davis, Fletcher, Foster, Gore, Hitchcock, Johnston of Alabama, Lea, Martin of Virginia, Martine of New Jersey, Myers, Newlands, Pomerene, Rayner, Reed, Simmons, Smith of South Carolina, Stone, Taylor, Terrell, Thornton, Watson, and Williams.

Those who voted for Mr. Clapp are,

Messrs. Bourne, Bristow, Crawford, Cummins, Gronna, La Follete, Poindexter, and Works.

Mr. Bacon voted for Mr. Tillman.

Mr. Clapp voted for Mr. Bristow.

Mr. Gallinger voted for Mr. Lodge.

There was consequently no choice.

Senate adjourned.

Saturday, August 12, 1911 (Journal, p. 169).

PRESIDENT OF THE SENATE PRO TEMPORE.

On motion by Mr. Smoot,

Ordered, That Augustus O. Bacon, a Senator from the State of Georgia, be, and he hereby is, elected President of the Senate pro tempore, to hold and perform the duties of said office during the absence of the Vice President on Monday next, August 14, 1911.

On motion by Mr. Smoot, at 2 o'clock and 41 minutes p. m.,

The Senate adjourned.

Monday, August 14, 1911 (Journal, p. 170).

VICE PRESIDENT ABSENT.

Under the designation by the Senate yesterday, Mr. Bacon assumed the chair.

SIXTY-SECOND CONGRESS, SECOND SESSION.

Monday, December 4, 1911 (Journal, p. 4).

PRESIDENT PRO TEMPORE.

On motion by Mr. Gallinger,

Ordered, That Charles Curtis, a Senator from the State of Kansas, be elected President of the Senate pro tempore to serve until Tuesday, December 12, 1911.

ADJOURNMENT.

On motion by Mr. Cullom, at 12 o'clock and 17 minutes p. m., the Senate adjourned.

Tuesday, December 5, 1911 (Journal, p. 4).

THE PRESIDENT PRO TEMPORE.

The Vice President being absent, the President pro tempore assumed the chair.

44TH CONGRESS, *1st Session.* | SENATE. | REPORT No. 3.

IN THE SENATE OF THE UNITED STATES.

JANUARY 6, 1876.—Ordered to be printed.

Mr. MORTON, from the Committee on Privileges and Elections, submitted the following

REPORT.

The Committee on Privileges and Elections, to whom was referred the following resolution, to wit:

Whereas since the last session of the Senate the Vice President of the United States has deceased: Therefore,

Resolved, That on the 7th day of January next, at 1 o'clock afternoon, the Senate will proceed to the election of a President pro tempore,

beg leave to submit the following report:

The committee do not understand that they are called upon to report upon any question of propriety or expediency in proceeding to an election of a President pro tempore for the Senate on the day named in the resolution, but to inquire into the character and tenure of that officer. The subject of inquiry may be divided into four heads:

I. Is the President pro tempore of the Senate an officer of the Senate?

II. Does the tenure of a President pro tempore of the Senate who may have been elected at one session expire with the beginning of the next session, the Vice President not having appeared to take the chair?

III. Does the death of the Vice President after the election of a President pro tempore have the effect to vacate the office of President pro tempore and require the Senate to proceed to a new election?

IV. Has the President pro tempore a vested right to the office until the Vice President reappears and takes the chair (unless in the meantime his term of office as Senator has expired), or has the Senate the right to remove him and to elect another at its pleasure?

The Vice President, who is made the presiding officer of the Senate by the Constitution, can not be regarded as an officer of the Senate; he is not chosen by the Senate and can not be removed by the Senate,

except upon articles of impeachment preferred by the House of Representatives, and can not resign his office to the Senate.

The fifth clause of section 3 of the first article of the Constitution provides that—

> The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

Who the other officers of the Senate may be, or how many, is left entirely to the judgment of the Senate. The first officers of the Senate chosen were Secretary and a doorkeeper, and the latter's designation changed March 3, 1805, to Sergeant at Arms and Doorkeeper.

To these were added, subsequently, the offices of Chaplain, Assistant Doorkeeper, chief clerk, and a principal executive clerk. These at present constitute all the "other officers" who are chosen directly by the Senate, and hold their offices entirely at its will.

For a period of 29 years, from January, 1824, to March, 1853, the Secretary, Sergeant at Arms, and the Assistant Doorkeeper were elected biennially. This custom ceased in March, 1853, and these officers since then have held during the pleasure of the Senate, which may be signified at any time by the appointment of others.

The President pro tempore of the Senate, being chosen by the Senate, must be regarded as one of its officers. This would be implied by the language of the Constitution above quoted, but results necessarily from the nature and power of the position.

The fifth clause of the second section of the first article of the Constitution provides as follows in regard to the House of Representatives:

> The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

This language designates the Speaker as an officer of the House, and as he is chosen by the House, he sustains the same relation to that body which the President pro tempore does to the Senate. We do not think it necessary to extend the argument to prove that the President pro tempore is an officer of the Senate.

We come now to the second question, viz, "Does the tenure of a President pro tempore of the Senate who may have been elected at one session expire with the beginning of the next session, the Vice President not having appeared to take the chair."

The office of President pro tempore of the Senate must expire whenever the absence of the Vice President is at an end and he appears in the Senate to preside. The power to elect a President pro tempore in the absence of the Vice President must include his absence on account of death as well as absence from any cause while living.

In the act of Congress approved March 1, 1792, "relative to the election of the President and Vice President of the United States, and declaring the officer who shall act as President in case of vacancies in the offices both of President and Vice President," we find the following provision, which embraces all that relates to the succession to the office of President to be found in the laws on the subject:

> That in case of removal, death, resignation, or inability, both of the President and Vice President of the United States, the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives, for the time being, shall act as President of the United States until the disability be removed or a President shall be elected. (Stat., I, 240.)

When the First Congress met, on the 6th of April, 1789, the Hon. John Langdon, of New Hampshire, was chosen President pro tempore of the Senate, immediately upon the appearance of a quorum, "for the sole purpose of opening and counting the votes for President of the United States;" and he held the office until the Vice President elect, Mr. John Adams, was installed into office and took his seat in the Senate, April 21, 1789, when the office of President pro tempore ceased.

The custom of the Vice President to vacate the chair before the close of a session, to enable the Senate to choose a President pro tempore, did not begin until after the passage of the act of March 1, 1792, and was obviously instituted to meet the contingency contemplated in the section of the act above quoted, by providing a President pro tempore of the Senate during the vacations of that body. The Senate, in contemplation of law, is a perpetual body, and the officers of the Senate are as much its officers during its vacations as during its sessions.

Mr. Jefferson, in his Manual, says:

> In the Senate a President pro tempore is proposed and chosen by ballot. His office is understood to be determined on the Vice President's appearing and taking the chair, or at the meeting of the Senate after the first recess.

The unbroken and uniform practice of the Senate, from its first session down to the present time, sustains the position that the office of President pro tempore of the Senate is determined on the Vice President's appearing and taking the chair. Mr. Jefferson says in the above rule that it is understood to be determined also "at a meeting of the Senate after the first recess." He does not state this as an established rule, but as an understanding, and it becomes important to learn what has been the usage of the Senate upon the subject.

The committee are under obligation to Mr. McDonald, the Chief Clerk of the Senate, for his researches, and shall quote freely from the valuable paper he has prepared upon the tenure of office of the President pro tempore.

To sustain the understanding given by Mr. Jefferson in his rule, there are four precedents, which we quote from the paper of Mr. McDonald:

INSTANCES IN WHICH THE OFFICE OF PRESIDENT PRO TEMPORE CEASED "AT THE MEETING OF THE SENATE AFTER THE FIRST RECESS."

I. First session of the Fourth Congress, commenced December 7, 1795. The Vice President, Mr. John Adams, being absent, the Senate proceeded to the election of a President pro tempore, and the Hon. Henry Tazewell, of Virginia, was duly elected.

In this instance Mr. Tazewell had been chosen President pro tempore at the last session, was present at the opening of the Senate, but did not resume the chair under his appointment at the last session.

II. Second session of the Sixth Congress, commenced November 17, 1800. The Vice President, Mr. Jefferson, being absent, and a quorum not appearing until the 21st of November, on that day, the Vice President being still absent, the Senate elected the Hon. John E. Howard, of Maryland, President pro tempore.

In this instance the Hon. Uriah Tracy, who had been elected President pro tempore at the last session, was present at the first meeting of the Senate after the recess, but did not resume the chair.

III. Second session of the Seventh Congress, commenced December 6, 1802. The Vice President, Aaron Burr, being absent, and a quorum not appearing until the 13th of December, on that day, the Vice President being still absent,

the Senate proceeded to ballot for a President pro tempore, but came to no choice. The next day the balloting was resumed, and the Hon. Stephen R. Bradley was elected.

Here again the President pro tempore, Abraham Baldwin, chosen at the last session, was present at the opening of the session and during the balloting, but did not preside.

IV. First session of the Eighth Congress, commenced October 17, 1803. The Vice President, Aaron Burr, being absent, the Senate elected the Hon. John Brown President pro tempore.

In this instance Mr. Stephen R. Bradley, chosen President pro tempore at the previous session, was present on the first day of the session, but did not preside.

We also quote from Mr. McDonald's paper the instances in which the office of President pro tempore was not determined by the expiration of the recess, but continued until the appearance of the Vice President or the election of another person.

I. The second session of the Second Congress met November 5, 1792, and in the Journal of that day is the following entry:

"In the absence of the Vice President, and also of the Hon. Richard Henry Lee, elected President pro tempore at a former session, the Senate proceeded to the choice of a President pro tempore, as the Constitution provides, and the Hon. John Langdon was duly elected."

Here reference is made to the absence of the President pro tempore, who had been chosen at the previous session, as well as to that of the Vice President; the inference from which would seem to be that had Mr. Lee been present he would, in virtue of his office of President pro tempore, have taken the chair.

II. Second session of the Third Congress, commenced November 3, 1794. The Vice President, Mr. Adams, being absent, the Hon. Ralph Izard, of South Carolina, chosen President pro tempore at the last session, resumed the chair.

III. On the 4th of March, 1809, immediately after the close of the second session of the Tenth Congress, the Senate assembled at a special or called session; and the Vice President, George Clinton, being absent, the Hon. John Milledge, chosen President pro tempore at the last session, took the chair.

IV. Second session of the Eleventh Congress, commenced November 27, 1809. A quorum not being present, the Senate adjourned. The next day the Vice President, George Clinton, being absent, the Hon. Andrew Gregg, chosen President pro tempore at the previous session, resumed the chair.

V. Third session of the Eleventh Congress, commenced December 3, 1810. The Vice President, George Clinton, being absent, the Hon. John Gaillard, chosen President pro tempore at the last session, resumed the chair.

VI. First session of the Twelfth Congress, commenced November 4, 1811. On the 24th of March, 1812, the Vice President, Mr. Clinton, being absent, the Senate chose the Hon. William H. Crawford President pro tempore.

On the 20th of April, 1812, the death of the Vice President was announced to the Senate; but this did not affect the appointment of Mr. Crawford as President pro tempore, and he continued to act.

VII. Second session of the Twelfth Congress, commenced November 2, 1812. A quorum not being present on that day, the Senate adjourned. The next day, November 3, Mr. Crawford, who had been chosen President pro tempore at the previous session, resumed the chair.

VIII. Third session of the Thirteenth Congress, commenced September 19, 1814. The Vice President, Elbridge Gerry, being absent, the Hon. John Gaillard, who had been chosen President pro tempore at the previous session, resumed the chair.

On the 23d of November, 1814, the death of the Vice President was announced to the Senate, and on the 25th of November the Senate proceeded to the election of a President pro tempore, when Mr. Gaillard (still holding) was reelected.

IX. First session of the Fourteenth Congress, commenced December 4, 1815. There being no Vice President, the President pro tempore, Mr. Gaillard, elected at the last session, resumed the chair.

X. Second session of the Fourteenth Congress, commenced December 2, 1816. Mr. Gaillard, elected President pro tempore on the death of Vice President Gerry, resumed the chair; also at the special session of the Senate, which assembled March 4, 1817.

XI. First session of the Fifteenth Congress, commenced December 1, 1817. The Vice President, Daniel D. Tompkins, being absent, the Hon. John Gaillard,

who had been chosen President pro tempore upon the death of Vice President Gerry, resumed the chair.

On the 19th of March, 1818, the Vice President, Mr. Tompkins, took the chair; and on the 31st of March, having retired, the Senate again chose Mr. Gaillard President pro tempore.

XII. Second session of the Fifteenth Congress, commenced November 16, 1818. The Vice President, Mr. Tompkins, being absent, the Hon. John Gaillard, who had been elected President pro tempore at the last session, resumed the chair.

XIII. First session of the Sixteenth Congress, commenced December 6, 1819. The Vice President, Mr. Tompkins, being absent, the Hon. James Barbour, who had been elected President pro tempore at the last session, resumed the chair.

XIV. Second session of the Sixteenth Congress, commenced November 13, 1820. The Vice President, Mr. Tompkins, being absent, the Hon. John Gaillard, who had been again chosen President pro tempore at the last session, resumed the chair.

XV. First session of the Seventeenth Congress, commenced December 3, 1821. The Vice President, Mr. Tompkins, being absent, the Hon. John Gaillard, who had been chosen President pro tempore at the session before the last, January 25, 1820, resumed the chair.

On the 28th December, 1821, the Vice President resumed the chair. On the 1st of February, 1822, he informed the Senate by letter that the condition of his health rendered it necessary that he should return to his family. Whereupon the Senate again chose the Hon. John Gaillard President pro tempore.

XVI. Second session of the Seventeenth Congress, commenced December 2, 1822. The Vice President, Mr. Tompkins, being absent, the Hon. John Gaillard, who had been chosen President pro tempore at the last session, resumed the chair.

The next day, December 3, the Vice President attended and resumed the chair; and on the 19th of February, 1823, being again absent, the Senate again elected Mr. Gaillard President pro tempore.

XVII. First session of the Eighteenth Congress, commenced December 1, 1823. The Vice President, Mr. Tompkins, being absent, the Hon. John Gaillard, who had been chosen President pro tempore at the last session, resumed the chair.

On the 21st of January, 1824, the Vice President resumed the chair, and on the 21st of May retired, when the Senate again elected Hon. John Gaillard President pro tempore.

XVIII. Second session of the Eighteenth Congress, commenced December 6, 1824. The Vice President, Mr. Tompkins, being absent, the Hon. John Gaillard, who had been chosen President pro tempore at the last session, resumed the chair.

XIX. Second session of the Twentieth Congress, commenced December 1, 1828. The Vice President, Mr. Calhoun, being absent, the Hon. Samuel Smith, of Maryland, who had been chosen President pro tempore at the last session, resumed the chair.

XX. First session of the Twenty-first Congress, commenced December 7, 1829. The Vice President, Mr. Calhoun, being absent, the Hon. Samuel Smith, who had been chosen President pro tempore at the last session, resumed the chair.

XXI. Second session of the Twenty-first Congress, commenced December 6, 1830. The Vice President, Mr. Calhoun, being absent, the Hon. Samuel Smith, who had been chosen President pro tempore at the last session, resumed the chair.

XXII. First session of the Twenty-second Congress, commenced December 6, 1831. The Vice President, Mr. Calhoun, being absent, the Hon. Samuel Smith, who had been chosen President pro tempore at the last session, resumed the chair.

XXIII. Second session of the Twenty-second Congress, commenced December 4, 1832. The Vice President, Mr. Calhoun, being absent, and also Mr. Tazewell, who had been chosen President pro tempore at the last session, the Senate proceeded to the election of a President pro tempore, and the Hon. Hugh Lawson White, of Tennessee, was chosen.

Mr. Calhoun resigned the office of Vice President after Mr. White's election as President pro tempore, but Mr. White continued to act without reappointment.

XXIV. First session of the Twenty-third Congress, commenced December 2, 1833. There being no Vice President, the Hon. Hugh Lawson White, who was

chosen President pro tempore upon the resignation of Mr. Calhoun, resumed the chair.

On the 16th of December, 1833, the Vice President, Martin Van Buren, appeared and took the chair. Mr. Van Buren was present at the commencement of each session of the Senate until the end of his term of office, which was on the 3d of March, 1837.

At the special session of the Senate which met on the 4th of March, 1837, Richard M. Johnson, who succeeded Mr. Van Buren as Vice President, took the chair.

Richard M. Johnson was present at the opening of the Senate at each session until the third session of the Twenty-fifth Congress.

XXV. Third session of the Twenty-fifth Congress, commenced December 3, 1838. The Vice President, Richard M. Johnson, being absent, the Hon. William R. King, who had been chosen President pro tempore at the last session, resumed the chair.

XXVI. First session of the Twenty-sixth Congress, commenced December 2, 1839. The Vice President, R. M. Johnson, being absent, the Hon. William R. King, who had been elected by the Senate President pro tempore at the last session, resumed the chair.

XXVII. Second session of the Twenty-sixth Congress, commenced December 7, 1840. The Vice President and the President pro tempore, chosen at the last session, being both absent, and a quorum not being present, the Senate adjourned.

The next day, December 8, a quorum being present, and the Vice President being still absent, the Hon. William R. King, who had been chosen President pro tempore at the previous session, resumed the chair.

XXVIII. At a special session of the Senate which met on the 4th of March, 1841, the Vice President elect, John Tyler, not yet having taken the oath of office, and Mr. King, the President pro tempore, chosen at the last session, not being qualified to act by reason of the expiration of his senatorial term, the Senate, by resolution, directed the oath of office to be administered to him (having been reelected to the Senate) by a Senator, and that he be declared President pro tempore.

XXIX. First session of the Twenty-seventh Congress, commenced May 31, 1841. The Vice President, Mr. Tyler, having become President by the death of Gen. Harrison in the recess, Mr. Southard, the President pro tempore, chosen by the Senate at the special session, resumed the chair.

XXX. Second session of the Twenty-seventh Congress, commenced December 6, 1841. There being no Vice President, Mr. Southard, who had been chosen President pro tempore at the special session, resumed the chair.

On the 31st of May, 1842, Mr. Southard resigned his position as President pro tempore, and the Senate elected the Hon. Willie P. Mangum to that office.

XXXI. During the third session of the Twenty-seventh Congress, and the first and second sessions of the Twenty-eighth Congress, Mr. Mangum continued uninterruptedly to discharge the duties of President pro tempore without reelection; and also at the special session of March 4, 1845, until the appearance of the Vice President, the Hon. George M. Dallas.

Mr. Dallas did not, as was customary, retire from the chair at this special session; but continued to occupy it until the final adjournment of the Senate. In consequence of this, there was no President of the Senate pro tempore during the long recess that ensued.

XXXII. Second session of the Thirtieth Congress, commenced December 4, 1848. The Vice President, Mr. Dallas, being absent, the Hon. David R. Atchison, who had been chosen President pro tempore at the last session, resumed the chair.

At the special session of the Senate which met March 5, 1849, the Vice President elect, Mr. Fillmore, not having been sworn in, Mr. Atchison, who had been chosen President pro tempore at the last session, but whose senatorial term expired with that session, was, under a resolution of the Senate, sworn in and declared to be the President pro tempore. And thereupon he resumed the chair and presided until the appearance of the Vice President, who took the chair.

XXXIII. First session of the Thirty-first Congress, commenced December 3, 1849. The Vice President, Mr. Fillmore, resumed the chair.

On the 10th of July, 1850, he informed the Senate that in consequence of the death of the President, Gen. Taylor, he would not again occupy the chair.

On the 11th of July, 1850, the Vice President having become President, the Senate chose the Hon. William R. King President pro tempore. Under this appointment Mr. King continued, without reelection, to discharge the duties of President pro tempore, opening the proceedings of the Senate at four of its sessions, until the 20th of December, 1852, when he resigned and was succeeded by Hon. David R. Atchison in that office.

XXXIV. First session of the Thirty-third Congress, commenced December 5, 1853. The Vice President, William R. King, having died in the recess, Mr. Atchison, who had been chosen President pro tempore at the special session of the Senate, March 4, 1853, resumed the chair.

XXXV. Second session of the Thirty-third Congress, commenced December 4, 1854. There being no Vice President, and the President pro tempore, Mr. Atchison, being absent, the Senate elected the Hon. Lewis Cass President pro tempore "for this day." The next day, December 5, 1854, the Senate elected the Hon. Jesse D. Bright President pro tempore.

XXXVI. First session of the Thirty-fourth Congress, commenced December 3, 1855. There being no Vice President, the Hon. Jesse D. Bright, who had been chosen President pro tempore at the last session, resumed the chair.

XXXVII. Second session of the Thirty-fourth Congress, commenced August 21, 1856. There being no Vice President, Mr. Bright resumed the chair.

XXXVIII. Third session of the Thirty-fourth Congress, commenced December 1, 1856. There being no Vice President, Mr. Bright resumed the chair.

XXXIX. At the special session of the Senate which assembled March 4, 1857, the Senate passed a resolution directing the oath of office to be administered to Mr. Mason, and that he be declared President pro tempore.

Mr. Mason had been chosen President pro tempore at the last session, but his senatorial term having expired with that session, and he having been reelected to the Senate, his reappointment as President pro tempore was thereby rendered necessary. This last appointment was vacated by the appearance of the Vice President, John C. Breckinridge.

XL. First session of the Thirty-fifth Congress, commenced December 7, 1857. The Vice President (Breckinridge) being absent, Mr. Rusk, who had been chosen President pro tempore at the last session, having died in the recess, the Senate elected Benjamin Fitzpatrick, of Alabama, President pro tempore. This appointment terminated on the appearance of the Vice President during the session; but upon the retirement of the Vice President at the close of the session, he was again chosen President pro tempore.

XLI. At a special session of the Senate, which met June 15, 1858, the Vice President, Mr. Breckinridge, being absent, Mr. Fitzpatrick, President pro tempore, resumed the chair.

XLII. Third session of the Thirty-seventh Congress, commenced December 1, 1862. The Vice President, Mr. Hamlin, being absent, the Hon. Solomon Foot, who had been appointed President pro tempore at the previous session, resumed the chair.

XLIII. At a special session of the Senate, which commenced March 4, 1863, the Vice President, Mr. Hamlin, being absent, the Senate, by resolution, directed that the oath of office be administered to the Hon. Solomon Foot, who had been reelected to the Senate, and that he be chosen President of the Senate pro tempore.

Mr. Foot had been chosen President pro tempore at the last session, but the expiration of his senatorial term with that session rendered his reappointment necessary.

XLIV. Second session of the Thirty-eighth Congress, commenced December 5, 1864. The Vice President, Mr. Hamlin, being absent, the Hon. Daniel Clark, who had been chosen President pro tempore at the previous session, resumed the chair.

XLV. First session of the Thirty-ninth Congress, commenced December 4, 1865. The Vice President, Andrew Johnson, having now become President by the death of Mr. Lincoln, the Hon. Lafayette S. Foster, who had been chosen President pro tempore at the special session of the Senate in March, 1865, resumed the chair.

XLVI. Second session of the Thirty-ninth Congress, commenced December 3, 1866. Mr. Foster, under his appointment as President pro tempore, in March, 1865, resumed the chair.

XLVII. First session of the Fortieth Congress, commenced March 4, 1867. The Senate at the last session having elected the Hon. Benjamin F. Wade

President pro tempore in the place of Mr. Foster, whose senatorial term of office expired with that session, Mr. Wade resumed the chair.

Under this appointment Mr. Wade continued in the performance of the duties of President pro tempore during the two remaining sessions of the Fortieth Congress, with the last of which his own term of office as a Senator expired.

XLVIII. At the special session of the Senate which met April 21, 1869, the Vice President, Mr. Colfax, being absent, the Hon. Henry B. Anthony, who had been chosen President pro tempore at a previous session, resumed the chair.

The Vice President, Mr. Colfax, was present at the assembling of the Senate at each of its regular sessions during the Forty-first and Forty-second Congresses; but uniformly retired from the chair just before the close of each session to enable the Senate to choose a President pro tempore, and this office the Senate as uniformly conferred upon the Hon. Henry B. Anthony, who was President pro tempore during the recesses that intervened in those two Congresses, as well as repeatedly during each session, upon the temporary absence of the Vice President.

XLIX. At the special or called session of the Senate, which assembled March 4, 1873, the Vice President, Hon. Henry Wilson, being absent, the Senate chose the Hon. Matt. H. Carpenter, a Senator from the State of Wisconsin, President pro tempore. This appointment ceased upon the appearance of the Vice President at the first session of the Forty-third Congress and his resuming the chair; but being forced by indisposition to retire from its duties, the Senate again chose Mr. Carpenter its President pro tempore, who is at present in the exercise of that office.

It thus appears that Mr. Jefferson's proposition, that the office of President pro tempore of the Senate is determined at the meeting of the Senate after the first recess, is not only not sustained by the usage of the Senate, but is overwhelmingly contradicted by it. The four instances referred to, sustaining Mr. Jefferson's theory, have been reversed by the unbroken usage of the Senate from 1803 down to the present time.

The committee, therefore, assume the rule to be well established that the President pro tempore of the Senate, chosen at the expiration of one session, does not cease to be such with the beginning of the next, but continues until the Vice President appears and takes the chair, or until the President pro tempore shall himself fail to appear in the Senate and take the chair, and thus require another to be elected, or until the term of office as Senator of the President pro tempore shall have expired.

The third question is: Does the death of the Vice President, after the election of a President pro tempore, have the effect to vacate the office of President pro tempore and require the Senate to proceed to a new election?

This question seems also to have been answered by the usage of the Senate. On the 24th of March, 1812, the Vice President, Mr. Clinton, being absent, the Senate chose the Hon. William H. Crawford President pro tempore. On the 20th of April, 1812, the death of the Vice President was announced to the Senate, but this did not affect the appointment of Mr. Crawford as President pro tempore, and he continued to act.

The third session of the Thirteenth Congress commenced September 19, 1814. The Vice President, Elbridge Gerry, being absent, the Hon. John Gaillard, who had been chosen President pro tempore at the previous session, resumed the chair.

On the 23d of November, of the same year, the death of the Vice President was announced to the Senate, and on the 25th of November the Senate proceeded to the election of a President pro tempore, when Mr. Gaillard (still holding) was reelected.

The second session of the Twenty-second Congress commenced December 4, 1832. The Vice President, Mr. Calhoun, being absent, and also Mr. Tazewell, who had been chosen President pro tempore at the last session, the Senate proceeded to the election of a President pro tempore, and the Hon. Hugh Lawson White, of Tennessee, was chosen.

Mr. Calhoun resigned the office of Vice President after Mr. White's election as President pro tempore, but Mr. White continued to act without reappointment.

The first session of the Twenty-seventh Congress commenced May 31, 1841. The Vice President, Mr. Tyler, having become President by the death of Gen. Harrison in the recess, Mr. Southard, the President pro tempore, chosen by the Senate at the special session, resumed the chair.

The first session of the Thirty-third Congress commenced December 5, 1853. The Vice President, William R. King, having died in the recess, Mr. Atchison, who had been chosen President pro tempore at the special session of the Senate, March 4, 1853, resumed the chair.

The first session of the Thirty-ninth Congress commenced December 4, 1865. The Vice President, Andrew Johnson, having become President by the death of Mr. Lincoln, the Hon. Lafayette S. Foster, who had been chosen President pro tempore at the special session of the Senate in March, 1865, resumed the chair.

It thus appears that the death of the Vice President, his resignation, or his transfer to the office of President by the Constitution upon the death of the President has not, by the practice of the Senate, had the effect to vacate the office of President pro tempore and make a new election necessary.

The committee are of the opinion that the death of the Vice President does not have the effect in any way to change the tenure of the office of the President pro tempore. It is true that, under the act of 1792, the President pro tempore is, upon the death of the Vice President, placed in the line of immediate succession to the performance of the duties of President in case of the death, resignation, or inability of that officer; but, as yet, the duties of the President pro tempore are in no wise changed.

What would be the tenure of his office in case the death, resignation, or inability of the President placed him in the discharge of the duties of President it is not now necessary to consider. Any opinion expressed upon that subject would be outside of the present inquiry.

The next question is this: A President pro tempore having been elected and being present in the Senate ready to take the chair, or being in the chair and the Vice President not having appeared, is it competent for the Senate at any time to proceed to the election of a new President pro tempore? The committee are of opinion that it is; that the President pro tempore and the other officers of the Senate are at all times under the control of the Senate and may be changed at its pleasure. This is certainly established by usage as to the Secretary, Sergeant-at-Arms, and Chief Clerk of the Senate. Can there be any distinction made between the tenure of those officers and that of the President pro tempore? If the President pro tempore sustains the same relations to the Senate that the Speaker does to the House, should not the Senate have the same power to remove

him which, it is admitted, the House has to remove the Speaker at any time? The President pro tempore, being always a member of the body, loses none of his privileges as a Senator. He is called upon to vote upon every question, may call another to the chair, and take part in the debates.

It has been argued that the constitutional provision that the Senate shall choose "a President pro tempore in the absence of the Vice President," gives him a fixed term of office until the Vice President reappears and takes the chair, and that during that period the Senate has no power to remove him and appoint another; that should the President pro tempore himself fail from any cause to appear in the Senate and take the chair, the Senate may elect another President pro tempore, who would fill the chair until the first President pro tempore reappears and resumes the chair, which he would do without reelection.

From this position the committee wholly dissent. If the Constitution had no provision for the election of a President pro tempore to serve during the absence of the Vice President, that power would belong to the Senate by the general law and practice of parliamentary bodies. The Constitution certainly fixes no term for the President pro tempore, and thus leaves him upon the same footing with the presiding officers of other parliamentary bodies, who are elected by the bodies themselves.

Mr. Jefferson in his Manual lays it down that a Speaker may be removed at the will of the House, and Cushing in his Treatise upon the Law and Practice of Legislative Assemblies, section 297, page 115, says:

It is essential, also, to the satisfactory discharge of the duties of a presiding officer that he should possess the confidence of the body over which he presides in the highest practicable degree. It is apparently for the purpose of securing this necessary confidence that the presiding officer is required to be chosen by the assembly itself, and by an absolute majority of votes; that he is removable by the the assembly at its pleasure; and that he is excluded from all participation in the proceedings as a member. Each of these particulars requires to be briefly considered.

Again, in section 299, page 117, he says:

The presiding officer, being freely elected by the members, by reason of the confidence which they have in him, is removable by them, at their pleasure, in the same manner, whenever he becomes permanently unable, by reason of sickness or otherwise, to discharge the duties of his place, and does not resign his office; or whenever he has in any manner or for any cause forfeited or lost the confidence upon the strength of which he was elected.

The idea that the President pro tempore has a fixed term until the Vice President reappears and takes the chair and that the Senate can not remove him and appoint another at will seems not to have been recognized or suggested by any action which the Senate have ever taken upon the subject.

On the 9th of June, 1856, Jesse D. Bright was President of the Senate pro tempore (the Vice President, William R. King, being dead) and addressed the following note to the Hon. Charles E. Stuart, a Senator from Michigan:

SIR: Do me the favor to take the chair to-day.

Yours, truly,

J. D. BRIGHT.

Mr. Stuart appeared in the Senate, took the chair, and called the Senate to order. The power of Mr. Bright, as President pro tempore, to depute Mr. Stuart to take the chair and preside over the Senate was denied by several Senators, whereupon Mr. Stuart was, by resolution, elected President pro tempore of the Senate. Afterwards, on the 11th of June, Mr. Stuart resigned his office as President pro tempore, and, on motion, Jesse D. Bright was reelected President pro tempore. The idea that Mr. Bright continued to hold his office as President pro tempore by virtue of his first election was not suggested by anybody.

In conclusion, the opinion of the committee may be thus summed up:

1. The tenure of a President pro tempore does not expire at the meeting of Congress after the first recess, the Vice President not having appeared to take the chair.

2. That the death of the Vice President does not have the effect to vacate the office of President pro tempore.

3. That the office of President pro tempore is held at the pleasure of the Senate.

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LBFo '12

62D CONGRESS
1st Session

SENATE

DOCUMENT
No. 104

PRESIDENT OF THE SENATE PRO TEMPORE

PROCEEDINGS IN THE UNITED STATES SENATE FROM APRIL 6, 1789, TO DECEMBER 5, 1911

RELATING TO

THE ELECTION, POWERS, DUTIES, AND TENURE IN OFFICE OF THE PRESIDENT OF THE SENATE PRO TEMPORE; INCLUDING THE REPORT OF THE COMMITTEE ON PRIVILEGES AND ELECTIONS, JANUARY 6, 1876

COMPILED BY

HENRY H. GILFRY
Chief Clerk of the United States Senate

PRESENTED BY MR. LODGE
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